

## STAFF REPORT: 'NO NET LOSS OF FOREST' AMENDMENTS TO THE FOREST CONSERVATION LAW & REGULATIONS

### Description

Changes to Chapter 22A of the Montgomery County Code (the Forest Conservation Law) and Chapter 22A of the Code of Montgomery County Regulations (the Forest Conservation – Trees Regulations) are proposed to achieve greater forest planting and forest conservation in Montgomery County, with a goal of achieving an equal or greater area of forest planted than forest removed on a County-wide level, by projects subject to the Montgomery County Forest Conservation Law. Other minor changes recommended by staff are intended to clarify and update sections of the Forest Conservation Law and Forest Conservation – Trees Regulations. Staff is recommending approval of the recommended changes for transmittal and introduction to the County Council.

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Montgomery County  
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### Summary:

- Changes to Chapter 22A of the Montgomery County Code (the Forest Conservation Law) and Chapter 22A of the Code of Montgomery County Regulations (the Forest Conservation – Trees Regulations) are being proposed by Planning staff to achieve greater forest planting and forest conservation in Montgomery County.
- The goal of the Planning Department’s No Net Loss of Forest initiative is to ensure that the acreage of planted forest is greater than the acreage of forest cleared on a County-wide level, while also allowing development to continue moving forward. Staff also have several suggestions for resources and programs that would complement the proposed amendments.
- There are several minor technical changes recommended by staff, intended to clarify and update sections of the Forest Conservation Law and Forest Conservation – Trees Regulations.
- This staff report provides an overview of the Planning Department’s No Net Loss of Forest initiative and progress to date, and describes how proposed changes to the Forest Conservation Law and Forest Conservation – Trees Regulations (Attachments A and B) would achieve a more balanced approach to forest conservation in Montgomery County.
- Staff is recommending approval of the recommended changes for transmittal and introduction to the County Council, and posting of the proposed Forest Conservation – Trees Regulations in the County Register.

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## SECTION 1: ABOUT THE ‘NO NET LOSS OF FOREST’ INITIATIVE

No net loss of forest is an effort by Montgomery Planning to achieve a more balanced approach to forest conservation that is tailored to Montgomery County. The primary goal of the initiative is to achieve “no net loss of forest” county-wide, while also allowing development to continue moving forward. Planning staff are focusing on strengthening the requirements of the Forest Conservation Law and Regulations, but also have suggestions for additional programs and resources to complement these amendments.

Montgomery County adopted its own Forest Conservation Law after the Maryland Forest Conservation Act was enacted in 1991. The county law has since been amended 5 times to strengthen requirements and incorporate state amendments. In the past 30 years, Montgomery County’s Forest Conservation Law has resulted in permanent protection of 15,705 acres of forest (including mature forest and newly planted forest). Of that area, the majority (12,844 acres) is mature forest protected by forest conservation easements.

Montgomery County’s Forest Conservation Law has required planting of 2,861 acres of new forest and mitigation for the clearing of 4,400 acres of forest. In the past 10 years, the law has required planting of 693 acres and mitigation for the clearing of 805 acres of forest, showing a trend towards more infill development and less forest clearing. This trend is also supported by the 2020 report “Examining the Role of Forests and Trees in Montgomery County’s Greenhouse Gas Inventory, prepared by experts and representatives of several Montgomery County agencies, including the Planning Department and Department of Environmental Protection. This report found that from 2011-2016, average annual emissions as a result of the loss of forests and trees were less than the period from 2001-2011, and that tree canopy in the county increased during the 2011-2016 time period.

While we are getting closer to achieving no net loss of forest in Montgomery County, one of the goals of this initiative is to increase the acreage of planted forest so that it is greater than the acreage of forest cleared in the county. This initiative aligns well with several goals of the Montgomery County Climate Action Plan and Thrive 2050, which generally include forest retention and restoration, increasing tree canopy, establishing strategies to protect plant diversity while complementing land use policies such as redevelopment, and improving the survivability of planted forests and trees.

In November and December 2021, the Planning Department held 4 working group sessions to bring key stakeholders together to collectively begin brainstorming and working toward the same goal. Representatives from twenty-four different groups, including non-profits, agency representatives, and the development community, participated in these working groups. These sessions included a review of relevant data, reports, other counties’ recent amendments, and analysis of possible amendments using real projects with Forest Conservation Plans. Requests raised by stakeholders during the

working group sessions include:

- Less forest clearing, more forest planting, and mitigation as close to the project as possible
- 1:1 replacement of forest cleared
- Establishment of high-quality forest ecosystems
- Consideration of the increasing expenses associated with forest planting requirements
- Moderate increase in mitigation requirements to keep increased costs reasonable
- More options to find off-site mitigation opportunities.

Planning staff also held additional meetings with individual stakeholder groups as requested to further discuss ideas and the outcome of proposed amendments.

In January and February 2022, the Planning Department's forest conservation staff incorporated the ideas generated during the working groups into draft amendments to the Forest Conservation Law and Regulations, and circulated the drafts for peer review and legal review. On March 18, 2022, the revised draft amendments were forwarded to Maryland Department of Natural Resources to be reviewed for compliance with Maryland's Forest Conservation Act.

## SECTION 2: SUMMARY OF PROPOSED CHANGES

In addition to minor changes for clarity and consistency purposes (unrelated to the goals of the 'no net loss of forest' initiative); the proposed amendments to the Forest Conservation Law and Forest Conservation – Trees Regulations to achieve 'no net loss of forest' in Montgomery County include:

- 1. Excluding activities located within the Commercial Residential (CR) zone classification from qualifying for the (s)(1) and (s)(2) FCP exemptions to require forest mitigation for activities in this zone that are currently receiving the highest density but providing the least forest mitigation.***
- 2. Adjusting the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) so that an approved NRI/FSD must be submitted with certain development plans. This change will ensure that high quality forest is properly considered and preserved whenever possible.***
- 3. Increasing the amount of forest that needs to be preserved (forest conservation threshold) in lower density land use categories including medium density residential, cluster medium density residential, agricultural and resources areas, and institutional land use categories. Cluster medium density residential is a new category introduced as part of this proposed amendment, and will include the rural cluster (RC), rural neighborhood cluster (RNC) and RE-2C zones.***

- 4. Increasing forest planting (afforestation) requirements in higher density land use categories if the net tract area is less than 5 acres in high density residential, mixed-use, and commercial/industrial land use categories. Afforestation requirements in institutional land use categories would increase regardless of whether the net tract area is less than 5 acres.**
- 5. Incentivizing mitigation in the same watershed or a priority watershed (to be defined by Planning Department staff) through increased reforestation ratios.**
- 6. Requiring planting of forest in all unforested stream valley buffers.**
- 7. Strengthening the requirements for applicants who find that the forest retention required by the Forest Conservation Law is not possible, so that the remainder of the forest mitigation required must be met through a combination of afforestation or reforestation at a 1:1 ratio and forest retention at a 2:1 ratio.**
- 8. Broadening the terms of maintenance and management agreements to include required maintenance for areas of existing forest retained to meet forest mitigation requirements, primarily to manage non-native invasive vegetation and increase the overall health of retained forest stands.**
- 9. Expanding mitigation requirements for variance trees to include mitigation for variance trees located within a forest. With the proposed amendment, removal of any “variance tree”, regardless of whether it is inside or outside of a forest, would require replanting at a minimum ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed (the Planning Department’s current standard for removal of “variance trees” outside of forest).**
- 10. Expanding options to create forest ecosystems and increase long-term resilience of planted forests by:**
  - a. Including an option for applicants and Planning Department staff to identify an alternative methodology to establish planted forest in Forest Conservation Plans, in order to better establish forest ecosystem using the best methodology for the site.**
  - b. Requiring new notes to be included on Forest Conservation Plans to indicate whether downed woody material will be retained in retention, afforestation, or reforestation areas to build habitat; or whether soil restoration techniques will be implemented. Planning Department staff may require either of these techniques to build micro-habitats and improve the soil micro-biome, which will support planted forests long-term.**

**11. Ensuring trees planted to meet the requirements of a landscaping or tree save plan have adequate soil conditions, volume, and surface area to sustain plantings.**

**12. Allowing landscaping to meet both reforestation or afforestation requirements in equity focus areas, to encourage tree planting wherever possible in areas of the county characterized by high concentrations of lower-income households, people of color, and individuals who are not fluent in English. Outside of equity focus areas, landscaping would only be allowed to be used to meet afforestation requirements.**

During working group meetings in November and December 2021, Planning Department staff and stakeholders reviewed recent Forest Conservation Law amendments introduced by other comparable counties in Maryland, and tested possible amendments to Montgomery County's Forest Conservation Law using 15 real projects that required Forest Conservation Plans to comply with Montgomery County's Forest Conservation Law. Projects were carefully selected to ensure an even distribution of location within the County, development type, net tract area, zone, level of forest removal, and/or afforestation required.

*Table 1: Comparison of ‘No Net Loss of Forest’ Amendments in Howard, Anne Arundel, and Frederick Counties with Proposed ‘No Net Loss of Forest’ Amendment to Montgomery County’s Forest Conservation Law & Regulations*

County	Reforestation Ratios	Forest Conservation Thresholds	Required Afforestation
<b>Howard County</b>	<p>Clearing <b>above</b> forest conservation threshold: Increased to <b>½:1 or 1:1</b>, depending on whether reforestation is occurring within or outside same watershed, respectively.</p> <p>Clearing <b>below</b> forest conservation threshold: Increased to <b>2:1 or 3:1</b>, depending on whether reforestation is occurring within or outside same watershed, respectively.</p>	No change	No change
<b>Frederick County</b>	Increased to “whichever method results in greater replanting,” Either <b>1:1 replacement overall</b> or original reforestation ratios ( <b>1/4:1</b> if clearing <b>above</b> forest conservation threshold and <b>2:1</b> if clearing <b>below</b> forest conservation threshold).	No change	No change
<b>Anne Arundel County</b>	Increased to <b>½:1</b> if clearing <b>above</b> forest conservation threshold and retained <b>2:1</b> ratio if clearing <b>below</b> forest conservation threshold	<p>Increased for sites within Priority Funding Areas with a <b>net tract area greater than 5 acres</b> in:</p> <ul style="list-style-type: none"> <li>• Medium Density Residential from 25% to <b>30%</b></li> <li>• High Density Residential from 20% to <b>25%</b></li> <li>• Mixed Use from 15% to <b>20%</b></li> <li>• Commercial/Industrial from 15% to <b>20%</b></li> </ul> <p>Increased for sites within Priority Funding Areas with a <b>net tract area less than 5 acres</b> in:</p> <ul style="list-style-type: none"> <li>• Medium Density Residential from 25% to <b>40%</b></li> <li>• High Density Residential from 20% to <b>35%</b></li> <li>• Mixed Use from 15% to <b>30%</b></li> <li>• Commercial/Industrial from 15% to <b>30%</b></li> </ul>	No change
<b>Montgomery County – Proposed Amendments</b>	<p>Clearing <b>above</b> forest conservation threshold: Increase to <b>½:1 or 1:1</b>, depending on whether reforestation is occurring within or outside same/priority watershed, respectively.</p> <p>Clearing <b>below</b> forest conservation threshold: Increase to <b>2:1 or 2.5:1</b>, depending on whether reforestation is occurring within or outside same/priority watershed, respectively.</p>	<p>Increase in:</p> <ul style="list-style-type: none"> <li>• Agricultural from 50% to <b>55%</b></li> <li>• Cluster Medium Density Residential from 25% to <b>45%</b></li> <li>• Medium Density Residential from 25% to <b>35%</b></li> <li>• Institutional from 20% to <b>25%</b>.</li> </ul>	<p>Increase in Institutional from 15% to <b>20%</b>.</p> <p>Increase from 15% to <b>20%</b> if <b>net tract area is less than 5 acres</b> in:</p> <ul style="list-style-type: none"> <li>• High Density Residential</li> <li>• Mixed Use</li> <li>• Commercial/Industrial</li> </ul>



*Table 2: Summary of 15 projects with Forest Conservation Plans, comparing current requirements with requirements resulting from proposed 'No Net Loss of Forest' Amendment to Montgomery County Forest Conservation Law*

	<b>Forest Conservation Law Effective 2/22/21</b>	<b>Proposed Amendment to the Forest Conservation Law as of 4/28/22</b>
<b>Total Forest Removed (from 7 of 15 projects)</b>	15.52 acres	15.52 acres
<b>Total Forest Mitigation Required for 7 Projects that Removed Forest</b>	14.95 acres	Within same or priority watershed: 17.58 acres  Outside same or priority watershed, within county: 25.24 acres
<b>Total Forest Mitigation Required for all 15 Projects</b>	50.22 acres	Within same or priority watershed: 58.79 acres  Outside same or priority watershed, within county: 66.35 acres

Ultimately, staff found that the amendments proposed above, particularly amendments 3 through 6, would result in higher forest mitigation and required forest planting on a County-wide scale at relatively moderate increased costs to applicants, achieving no net loss of forest. Staff also felt that these proposed amendments would incentivize less forest clearing when possible. The proposed amendments carefully balance the requests of stakeholders heard during the working groups, and take into account other related and important priorities in the county, such as providing affordable housing and mitigating climate change.

In addition to these proposed amendments, staff is proposing several supporting programs that the Planning Department can offer and for County Council consideration.

#### **Planning Department:**

1. Yearly nominations for projects with the best outcomes for forest in Montgomery County (e.g. achieving significant net gain in forest, or going above and beyond requirements of Chapter 22A)
2. Create supplemental list of fast-growing native tree and shrub species that are resilient to deer browse, changing climate, sun exposure, and invasive pressure to accelerate canopy closure and establishment.
3. Expand public benefit options to include establishment of micro-forests, forests established using alternative methods, purchasing credits from off-site existing forest retention banks, increased off-site forest planting or retention, and planting street trees.

**For County Council Consideration:**

1. Offer tax incentives to developers who plant or protect forest above and beyond requirements of Chapter 22A, or choose to develop property without forest.
2. To help meet the goals of the Climate Action Plan, offer funding subsidies (perhaps on a sliding scale) for applicants to meet forest mitigation requirements if offering affordable/attainable housing units.
3. Expand the Planning Department's forest conservation staff to increase capacity for the department to support applicants seeking opportunities for forest mitigation.

## SECTION 3: DETAILED DISCUSSION OF CHANGES

### PROPOSED CHANGES TO THE FOREST CONSERVATION LAW

#### SECTION 22A-3 DEFINITIONS.

**Proposal**

Lines 9-15 incorporate definitions of “environmental buffer” and “environmental guidelines.”

**Analysis**

These definitions are incorporated from the Forest Conservation – Trees Regulations and would be needed if proposed language under Sections 22A-5(a), 22A-5(n), 22A-5(s), and 22A-5(t) is adopted.

**Proposal**

Lines 20-23 update the definition of “forest conservation threshold.”

**Analysis**

This definition would need to be updated if the proposed language under Section 22A-12 is adopted.

#### SECTION 22A-5 EXEMPTIONS.

**Proposal**

Lines 50-51, 72-73, 82-83, 91-92, 104-105, and 113-115 clarify that in order for an activity to qualify for the FCP exemptions under Section 22A-5(a), 22A-5(n), 22A-5(s), or 22A-5(t), the activity must not occur within an environmental buffer.

**Analysis**

This new language makes clear that in order to receive a confirmed FCP exemption under Section 22A-5(a), 22A-5(n), 22A-5(s), or 22A-5(t), the activity must not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines.

## **Proposal**

Line 78 and 86 exclude activities located within the Commercial Residential (CR) zone classification from qualifying for the (s)(1) and (s)(2) FCP exemptions.

## **Analysis**

The intent with this proposed change is to require forest mitigation for activities in this zone that are currently receiving the highest density but providing the least forest mitigation by qualifying for one of the (s) FCP exemptions.

## **SECTION 22A-11 EXEMPTIONS.**

## **Proposal**

Lines 168-173, 205-206, 260, 277, 294, 305-308, and 317 introduce a new requirement for Natural Resource Inventories/Forest Stand Delineations (NRI/FSDs) to be approved prior to the submittal of any development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit.

## **Analysis**

This change will ensure that all environmental features are considered before development and are known and properly assessed at the time a development plan is submitted to the Planning Department for review. The primary goal with this change is to ensure that high quality forest is properly considered and preserved whenever possible.

## **SECTION 22A-12 RETENTION, AFFORESTATION, AND REFORESTATION REQUIREMENTS**

## **Proposal**

Line 355 amends the forest conservation thresholds and required afforestation for subject activities in different land use categories.

## **Analysis**

Proposed changes would increase forest conservation thresholds in lower density land use categories where additional open space exists for forest preservation or planting. These land use categories include the medium density residential, cluster medium density residential, agricultural and resource areas, and institutional land use categories. Cluster medium density residential is a new category introduced as part of this proposed amendment, and would include the rural cluster (RC), rural neighborhood cluster (RNC) and RE-2C zones. The medium density residential and use category would continue to include the RE-1 and RE-2 zones. Staff felt that increasing forest conservation thresholds in the cluster medium density residential land use categories was appropriate since these clustered

developments provide more yield within the zone, allowing for remaining open space to be preserved as forest, or planted.

For required afforestation, the proposed changes would increase requirements in higher density land use categories if the net tract area is less than 5 acres in the high density residential, mixed-use, and commercial/industrial land use categories. Afforestation requirements in institutional land use categories would increase regardless of whether the net tract area is less than 5 acres. Afforestation is typically required to meet requirements for projects that remove little to no forest. Therefore, staff felt that it would be appropriate and reasonable to increase afforestation requirements for projects with smaller net tract areas, that may be receiving higher density. Analysis of several projects on larger institutional properties indicated that there would be additional space on those property types to accommodate a greater afforestation requirement.

### **Proposal**

Lines 361-364 and 367-371 increase the reforestation ratios and introduce a new tiered approach to mitigation, and lines 430-436, lines 459-463, and lines 490-493 update the location requirements and requirements for applicants purchasing credits from a forest mitigation bank according to these new proposed standards.

### **Analysis**

These proposed changes increase reforestation ratios from  $\frac{1}{4}$ :1 to  $\frac{1}{2}$ :1 and 1:1, if forest cleared is above the forest conservation threshold; and increase reforestation ratios to 2:1 (retained) and  $2\frac{1}{2}$ :1, if forest cleared is below the forest conservation threshold. If forest mitigation were to take place within the same watershed as the project, or a priority watershed (to be defined by Planning Department staff), the lower reforestation ratios in each category would apply. In this way, these revised ratios would incentivize mitigation in the same watershed as the project, or a watershed within the county where forest mitigation is a high priority.

### **Proposal**

Lines 392-398 would expand stream valley buffer planting requirements so that all unforested stream valley buffers on site must be afforested or reforested.

### **Analysis**

Currently unforested stream valley buffers must be reforested in special protection areas and within the Patuxent Management Area. This proposed change would expand this requirement to apply to all unforested stream valley buffers in the county, except if reforestation or afforestation of the stream valley buffer conflicts with one of the natural resource management goals of the Department of Parks, such as designated meadow habitat, or an allowable use for stream valley buffers per the environmental guidelines.

## **Proposal**

Lines 445-447 would codify staff’s policy for applicants who find that the forest retention required by the Forest Conservation Law is not possible.

## **Analysis**

This proposed change would make it clear that applicants in these cases are required to meet the remainder of required forest mitigation through a combination of afforestation or reforestation, on-site or off-site.

## **Proposal**

Lines 468-479 would expand the use of maintenance and management agreements to potentially include required maintenance for areas of existing forest retained to meet forest mitigation requirements.

## **Analysis**

The intent of this change is to ensure that existing forest stands retained to meet forest mitigation requirements are high quality. Primarily, this will mean that retained forest will require maintenance if needed, potentially including control of non-native invasive vegetation or supplemental plantings.

## **SECTION 22A-21 VARIANCE**

## **Proposal**

Lines 498-504 would expand replanting requirements for applicants granted a variance to remove trees listed as priority for retention (“variance trees”)

## **Analysis**

Currently applicants that propose to remove “variance trees” outside of forest must replant at a minimum ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed. The proposed changes to this section expand the replanting requirement to apply to all “variance trees” proposed for removal, regardless of whether they are located within or outside forest.

## **THROUGHOUT THE AMENDMENT**

## **Proposal**

Lines 14-16, 25, 28-32, 34-36, 41, 67, 93-95, 120-134, 141, 147, 150, 160-164, 176, 190-191, 197, 199-201, 203, 207, 221-224, 227-230, 244-246, 325, 352-353, 377-378, 414-416, and 423-424 are technical corrections.

## Analysis

These updates are proposed for clarity and consistency purposes and are mostly unrelated to the goals of the ‘no net loss of forest’ initiative.

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## PROPOSED CHANGES TO THE FOREST CONSERVATION - TREES REGULATIONS

### SECTION 22A.00.01.03 DEFINITIONS

#### Proposal

Changes to this section include a new definition of “equity focus areas,” as defined by the Planning Department’s equity review group.

#### Analysis

This definition would be needed if the proposed language under Section 22A.00.01.08.G.8 is adopted.

### SECTION 22A.00.01.06 NATURAL RESOURCE INVENTORY AND FOREST STAND DELINEATION (NRI/FSD) REQUIREMENTS

#### Proposal

Proposed sub-section F incorporates the Planning Department’s policies on NRI/FSD validity periods and recertification standards.

#### Analysis

These standards are currently outlined in the guidance document for preparing and reviewing NRI/FSDs. Staff are proposing that these policies be incorporated into the Forest Conservation Trees – Regulations for consistency.

### SECTION 22A.00.01.08 GENERAL FOREST CONSERVATION PLAN PROVISIONS

#### Proposal

Sub-section E(3) increases minimum gallon sizes for certain trees and shrubs and extends the maintenance and management period to the end of the 3<sup>rd</sup> or 5<sup>th</sup> growing season.

#### Analysis

Forest conservation staff suggested increasing the minimum gallon sizes for smaller trees and shrubs for consistency with current growing standards and sizes typically offered by nurseries and distributors. Staff are also recommending extending the point at which survival requirements are assessed to match the length of the maintenance period, which was increased from 2 years to 5 years during the last amendment cycle (effective 2/22/21).

## **Proposal**

A new note under sub-section E(3) allows for an alternative methodology to establish planted forest.

## **Analysis**

This proposed addition would allow applicants and Planning Department review staff to work together to implement an alternative methodology to establish planted forest as required by a Forest Conservation Plan where appropriate. An alternative method, such as planting smaller trees and shrubs at a higher density (referred to in some instances as the “Miyawaki method”), may be a better method to establish forest ecosystem depending on the unique conditions of the site, and may establish a resilient forest ecosystem more quickly. However, the density and survival requirements detailed in this same section would still need to be met at a minimum to ensure standards are being implemented equally across projects.

## **Proposal**

Proposed sub-section G(5) introduces a new requirement for landscaping and tree save plans, to ensure trees planted to meet afforestation and reforestation requirements have adequate soil conditions, volume, and surface area.

## **Analysis**

This proposed addition would allow Planning staff to ensure that trees planted to meet these requirements have adequate soil conditions and space to survive and offer maximum tree canopy at maturity.

## **Proposal**

Proposed language in sub-section G(8) would revise how landscaping can be used to meet requirements.

## **Analysis**

If adopted, this change would only allow landscaping to meet reforestation or afforestation requirements in equity focus areas of Montgomery County. The intent with this proposed change is to encourage tree planting wherever possible in areas of the county characterized by high concentrations of lower-income households, people of color, and individuals who are not fluent in English. Outside of equity focus areas, landscaping would only be allowed to be used to meet afforestation requirements, which are required of projects removing little to no forest. Under the current Forest Conservation Law, landscaping may be used to meet both reforestation or afforestation requirements anywhere in the County.

## SECTION 22A.00.01.09 FOREST CONSERVATION PLAN REQUIREMENTS

### **Proposal**

Proposed changes in subsection B introduce two new notes required to be included in Forest Conservation Plans.

### **Analysis**

These proposed additions would indicate whether downed woody material will be retained in retention, afforestation, or reforestation areas to build habitat; or whether soil restoration techniques will be implemented. Planning Department staff may require either of these techniques to build micro-habitats and improve the soil micro-biome, which will support planted forests long-term and generally benefit the forest ecosystem.

## THROUGHOUT THE AMENDMENT

### **Proposal**

All other proposed changes are technical corrections.

### **Analysis**

These updates are proposed for clarity and consistency purposes and are mostly unrelated to the goals of the ‘no net loss of forest’ initiative.

## SECTION 4: CONCLUSION

Staff recommends the Planning Board approve transmittal of the proposed changes to Chapter 22A of the County Code and Chapter 22A of the Code of Montgomery County Regulations to the President of the Montgomery County Council for introduction, and posting of the proposed Forest Conservation – Trees regulations in the County Register.

**ATTACHMENT A: PROPOSED AMENDMENTS TO THE FOREST CONSERVATION LAW**

**ATTACHMENT B: PROPOSED AMENDMENTS TO THE FOREST CONSERVATION – TREES REGULATIONS**



Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-12, 22A-13, and 22A-21 are amended as follows:

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

\*\*\*

*Administrative subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and submitted for approval by the Planning Director under Division 50.6 of Chapter 50 before preparation of a subdivision plat.

\*\*\*

*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 the latest version of Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or an appropriate master plan; and floodplains.

*Environmental guidelines* mean the Guidelines for Environmental Management of Development in Montgomery County, Maryland (M-NCPPC), as amended.

*Equestrian Facility*: A] means any building, structure, or land area that is primarily used for the care, breeding, boarding, rental, riding, sport eventing, or training of horses or ponies, the teaching of equestrian skills, or competitive equestrian events.

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*Forest conservation threshold* means the percentage of the net tract area at which the reforestation [requirement] ratio increases [changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed.] as specified in Section 22A-12.

24 \*\*\*

25 *Minor subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and  
26 submitted for approval by the Planning Director under Division 50.7 of Chapter 50.

27 \*\*\*

28 *Preliminary plan of subdivision* means a plan for a proposed subdivision [or  
29 resubdivision] prepared and submitted for approval by the Planning Board under Division 50.4 of  
30 Chapter 50 before preparation of a subdivision plat.

31 *Project plan* means [a plan or] an amendment to a project plan referred to in Section 7.7.1.B of  
32 Chapter 59 [or a sketch plan approved under Section 7.3.3 of Chapter 59.].

33 \*\*\*

34 *Specimen tree* means a tree that is particularly impressive or unusual example of a species due to  
35 its size, shape, age, or any other trait that epitomizes the character of the species as further  
36 described in the most recent version of the Trees Technical Manual.

37 \*\*\*

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

39 Except as otherwise expressly provided in this Chapter, this Chapter applies to:

40 (a) a person required by law to obtain an approval or amendment to a development plan,  
41 diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan,  
42 preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

43 \*\*\*

44 **Sec. 22A-5. Exemptions.**

45 The requirements of Article II do not apply to:

(a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:

(1) does not require a special exception;

(2) does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines;

~~[(2)]~~(3) does not result in the cutting, clearing, or grading of:

\*\*\*

(k) any lot covered by a preliminary plan of subdivision or site plan that did not receive a sediment control permit before July 1, 1991, and for which the preliminary plan of subdivision or site plan:

(1) was approved before July 1, 1984, and has less than 40,000 square feet of forest cover; or

(2) was approved or extended between July 1, 1984 and July 1, 1991, and

(3) the construction will not result in the cutting, clearing, or grading of:

(A) any forest in a stream buffer, or

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

A preliminary plan of subdivision or site plan approved before July 1, 1991, that is revised after that date at the initiative of the applicant and which results in the cutting of more than 5,000 additional square feet of forest is not exempt. Development or redevelopment of a property which requires [re]subdivision is not exempt. This subsection does not apply to a planned unit development subject to subsection (l);



(D) would not result in development within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and

(E) [F]forest in any [priority area] on-site floodplains, stream buffers, steep slopes, critical habitats, and areas designated as priority save areas in a master plan or functional plan must be preserved.[: and]

\*\*\*

(t) a modification to a:

(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 forest located on property in a special protection area which must submit a water quality plan;

(C) the development does not occur within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines;

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

[(D)](E) the modification does not increase the developed area by more than 50%, and any existing principal building, as defined in Chapter 59, is retained; and

[(E)](F) the pending development application does not propose any residential uses; or

(2) residential developed property if:

(A) forest is not impacted or cleared;

(B) the [modification is not located in a stream buffer]development does not occur within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines;

\*\*\*

**Sec. 22A-6. Special provisions – Exemptions; tree save plans; and highway projects.**

(a) *Tree save plan requirements.* An activity or development that would be exempt under Section 22A-5, and that would impact a significant, specimen, or champion tree, requires the approval of a tree save plan.[, which may] The tree save plan must require tree preservation or planting of mitigation trees at a ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, [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 that[which] are smaller than specimen size may be included in the tree save plan.

(b) *Exemption expiration.* A confirmed exemption is valid for 5 years from the date the exemption is confirmed[that has not started any authorized land disturbance within 5 years from the date of approval of the exemption is expired], unless the confirmed exemption pertains to a subdivision with a validity period of more than 5 years, in which case[. If the subdivision has a validity period of more than 5 years,] the confirmed exemption does not expire until the end of the subdivision validity period. If site development activities have not been authorized by the forest conservation inspector to commence before the expiration date, including inspections detailed under 22A-15(c)(2)(A) and (B), the approved exemption will expire at that time.

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136 **Sec. 22A-9. County and Municipal Highway Projects**

137 (a) General.

138 (1) This Section applies to construction of a highway or by the County or a municipality  
139 as part of an approved Capital Improvements Program project.

140 (2) The construction should minimize forest removal, land disturbance, and loss of  
141 significant, specimen or champion trees to the extent possible while balancing other  
142 design, construction, and environmental standards. The constructing agency must make a  
143 reasonable effort to minimize land disturbance to avoid the cutting or clearing of trees  
144 and other woody plants.

145 (b) If the forest to be cut or cleared for a County highway project equals or  
146 exceeds 20,000 square feet, the constructing agency must reforest a suitable area  
147 at the rate of one acre of protected reforestation for each acre of forest cleared.

148 (c) Reforestation for County highway projects must meet the standards in  
149 subsections 22A-12(e), (g) and (h).

150 (d) Any mitigation requirement for loss of significant, specimen or champion  
151 trees must be based on the size and character of the tree.

152 \*\*\*

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

154 \*\*\*

155 (b) Forest stand delineation.

156 \*\*\*

157 (4) An approved forest stand delineation is not valid after 2 years unless:

(A) a forest conservation plan or a plan under Section 22A-9 has been accepted as complete; or

(B) the delineation has been recertified by the preparer, which may occur within one year after the expiration date if the requirements of Section 22A.00.01.06.F. of the Forest Conservation – Trees Regulations are met.

(5) An approved forest stand delineation may not be amended. A new forest stand delineation must be submitted for review in order to make any changes.

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

(a) General.

(1) Application. The submission of a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section must include an approved forest stand delineation or a confirmed exemption from submitting a forest conservation plan under Section 22A-5.

[(1)](2) Coordinated with project review. The [forest stand delineation and]forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and



entities that will provide public utilities to the tract, to promote consistency between the objectives of this Chapter and other development requirements. To the extent practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.

[(2)](3) Modification to an approved plan. The Planning Director may approve modifications to an approved forest conservation plan that are consistent with this Chapter if:

(A) field inspections or other evaluation reveals minor inadequacies of the plan;

or

(B) each modification is a minor amendment, as defined in Section 22A.00.01.13.A.1 of the Forest Conservation – Trees Regulations, and does not impact any forest in a priority area (such as substituting an on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or

(C) action is otherwise required in an emergency situation.

Any other modification, including major amendments, must be approved by the agency that approved the forest conservation plan.

[(3)](4) Notice. Public posting and written notice of forest conservation plan applications must be provided by applicants as specified in [regulation]Section 50/59.10.01.04 of the Administrative Procedures for Development Review.

(b) *Project requiring development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, biohealth priority campus plan, or site plan approval.*

(1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with the] and the forest stand delineation must be approved before the applicant can submit an application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, biohealth priority campus plan, or site plan[, whichever comes first]. Within 30 days of receipt, the Planning Director must notify the applicant whether the forest stand delineation is complete and correct. If the Planning Director fails to notify the applicant within 30 days, the delineation will be treated as complete and correct. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

(2) Forest conservation plan.

(A) Application. After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director with the related application for a development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, biohealth priority campus plan, or site plan. If the development proposal will require more than one [of the] approval[s] subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last

approval; however, if multiple approvals subject to this subsection are submitted to the Planning Director for simultaneous review, the applicant need only submit a final forest conservation plan that will be considered for each relevant application. If only one approval subject to this subsection is required, an applicant must submit [a preliminary forest conservation plan and] a final forest conservation plan at the time of the development application.

(B) Review. Within 45 days from receipt of a final forest conservation plan, including a plan that is not reviewed in 2 stages, the Planning Director must notify the applicant whether the forest conservation plan is complete and approved for submission to the Planning Board as part of the development application. If the applicant is not notified within 45 days, the plan will be treated as complete and approved for submission. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.

(C) Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, sketch plan, preliminary plan of subdivision, biohealth priority campus plan, or site plan, as appropriate. Compliance with the preliminary forest conservation plan, when required and as amended by the Board, must be made a condition of any approval of the first applicable development application. Compliance with the final forest conservation plan, as amended by the Board, must be made a condition of any approval of the last development application. For

a development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. A final forest conservation plan must be approved by the Planning Board or Planning Director, as appropriate, before the Planning Board approves a record plat.

(c) *Project requiring special exception or conditional use approval.*

(1) Forest stand delineation. If a special exception or conditional use proposal is subject to the requirements of this Chapter, the applicant must submit a forest stand delineation to the Planning Director before the Board of Appeals may consider the application for the special exception. The deadlines for reviewing a forest stand delineation are the same as in paragraphs (a)(1) and (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception or conditional use application and must not approve a special exception or conditional use application that conflicts with the preliminary forest conservation plan. A final forest conservation plan must be submitted before obtaining a sediment control permit, or at the time of preliminary plan of subdivision or site plan application, if required. The deadlines for reviewing a final forest conservation plan are the same as in paragraph (d)(2) of this Section.

(d) *Project requiring a sediment control permit only.*

(1) Forest stand delineation. If an application for a sediment control permit may be subject to the requirements of this Chapter, the applicable sediment control permit issuing

authority must direct the applicant to the Planning Director for a determination. If the Planning Director finds the sediment control permit application to be subject to this Chapter, the applicant must submit a forest stand delineation to the Planning Director for review. The deadlines for reviewing a forest stand delineation are the same as in paragraphs (a)(1) and (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a forest conservation plan. Within 45 days from receipt of the forest conservation plan, the Planning Director must notify the applicant if the forest conservation plan is complete and approved. If the applicant is not notified within 45 days, the plan will be treated as complete and approved. The Director may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.

(3) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until a final forest conservation plan, if required, is approved.

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

(1) Forest stand delineation. A person seeking mandatory referral or a park development plan for a project that is subject to the requirements of this Chapter must first submit a forest stand delineation to the Planning Director for review. The deadlines for reviewing a forest stand delineation are the same as in paragraphs (a)(1) and (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a final forest conservation plan. The Planning Board must consider the final forest conservation plan when reviewing the mandatory referral application or the park development plan.

(3) Issuance of a sediment control permit. Issuance of a sediment control permit is subject to the conditions specified in paragraph (d)(3) of this Section.

(f) *Project requiring sketch plan approval.*

(1) Forest stand delineation. For any sketch plan application filed on or after November 14, 2017, the applicant must submit to the Planning Director, for approval, a forest stand delineation [reviewed concurrently with]before the sketch plan application. The deadlines for reviewing a forest stand delineation are the same as in paragraphs (a)(1) and (b)(1) of this Section. [The forest stand delineation must be approved prior to Planning Board approval of the sketch plan.]

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director with the first development application after approval of the sketch plan. The deadlines for reviewing a preliminary and final forest conservation plan are the same as in paragraphs (b)(2)(B) and (b)(2)(C) of this Section.

(g) *Project requiring administrative subdivision approval.*

(1) Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation before the administrative subdivision application. The deadlines for reviewing a forest stand delineation are the same as in paragraphs (a)(1) and (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Planning Director must consider the preliminary forest conservation plan when approving the administrative subdivision application and must not approve an administrative subdivision application that conflicts with the preliminary forest conservation plan. A final forest conservation plan must be submitted and approved before obtaining a sediment control permit[,] or record plat, whichever comes first. The deadlines for reviewing a final forest conservation plan are the same as in paragraph (d)(2) of this Section. If the Director defers the approval of an administrative subdivision to the Planning Board, the Planning Board must review and act on the preliminary forest conservation plan with the administrative subdivision plan. The deadlines for reviewing a final forest conservation are the same as in paragraph (b)(2)(C) of this Section.

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

(a) Table.

<p><i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i></p>			
<i>Land Use Category</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation <u>Net Tract Area &gt; 5</u> <u>acres</u></i>	<i><u>Required Afforestation</u> <u>Net Tract Area &lt; 5</u> <u>acres</u></i>

Agricultural and resource areas	[50]55%	20%	<u>20%</u>
<u>Cluster medium-density residential areas</u>	<u>45%</u>	<u>20%</u>	<u>20%</u>
Medium-density residential areas	[25]35%	20%	<u>20%</u>
Institutional development areas	[20]25%	[15]20%	<u>20%</u>
High-density residential areas	20%	15%	<u>20%</u>
Mixed-use development areas	20%	15%	<u>20%</u>
Planned unit development areas	20%	15%	<u>20%</u>
Commercial and industrial use areas	15%	15%	<u>20%</u>

\*\*\*

(b) *Retention.*

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(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or



Planning Director, as appropriate, finds that the applicant qualifies for a variance under  
Section 22A-21:

(A) Any tree, shrub, or plant that is rare, threatened, or endangered under:

(i) the Federal Endangered Species Act of 1973 in 16 U.S.C. Sections  
1531 — 1544 and in 50 CFR 17;

(ii) the Maryland Nongame and Endangered Species Conservation Act,  
Title 10, Subtitle 2A of the Natural Resources Article of the Maryland  
Code; or

(iii) COMAR 08.03.08;

(B) Any tree that is:

(i) 1 inch in caliper or larger and part of a historic site or located within  
an historic district,

(ii) associated with a historic structure, or

(iii) designated by the State or County as a national, State, or County  
champion tree; or

\*\*\*

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

(1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract  
area below the applicable forest conservation threshold, the area of forest removed must  
be reforested at a ratio of 2 acres planted for every one acre removed if reforestation is  
occurring within the same 8-digit watershed as the project or a priority 8-digit watershed,  
or 2 ½ acres planted for every one acre removed if reforestation is occurring within the  
County outside of the same 8-digit watershed and outside of a priority 8-digit watershed.

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of  $[\frac{1}{4}]\frac{1}{2}$  acre planted for every one acre removed if reforestation is occurring within the same 8-digit watershed as the project or a priority 8-digit watershed, or 1 acre planted for every one acre removed if reforestation is occurring within the County outside of the same 8-digit watershed and outside of a priority 8-digit watershed.

\*\*\*

(d) *Afforestation.*

(1) A site with less than 20 percent of the net tract area in forest cover must be afforested in accordance with the required afforestation percentages shown on the table in subsection (a) of this Section.

(2) Afforestation [should]must be accomplished by the planting of forest cover[. However], unless the applicant demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be, that afforestation using forest cover is inappropriate for a site because of its location in an urban setting, redevelopment context, high-density residential, commercial, industrial, planned unit development, or institutional area (as defined in Section 22A-3), or similar reason, afforestation requirements may be satisfied by tree cover.

\*\*\*

(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; off-site afforestation or reforestation; 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.

(B) All unforested stream valley buffers on site must be afforested or reforested, except if afforestation or reforestation in the stream valley buffer would be in conflict with the natural resource management goals of the Department of Parks or allowable uses as established in the latest version of environmental guidelines. All unforested stream valley buffers in a special protection area and stream valley buffers within the Patuxent Management Area must be afforested as established in the latest version of the environmental guidelines.

[(B)](C) Governmental considerations. The sequence provided in subparagraph (A) of this paragraph may be modified for a specific project if the applicant demonstrates to the satisfaction of the Planning Board or the Planning Director, as the case may be, that a different sequence is necessary:

(i) to achieve the objectives of a master or sector plan or other County land use policies or to take advantage of opportunities to consolidate forest conservation efforts;

(ii) for public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or

(iii) for educational, recreational, and public safety facilities, to ensure that public safety is not compromised.

411 [(C)](D) Public Utility Considerations. The sequence provided in subparagraph (A) of  
412 this paragraph for public utility projects may be modified to reflect applicable electrical  
413 or other safety codes, or right-of-way constraints.

414 (2) Off-site afforestation and reforestation. If no opportunities for planting forest exist  
415 per Section 22A-12(e)(1)(A)[In addition to the use of other sites proposed by an applicant  
416 and approved by the County], off-site afforestation or reforestation may also include:

417 (A) Forest mitigation banks designated in advance by the County.

418 (B) Protection of existing off-site forest. Acquisition of an off-site protective  
419 easement for existing forested areas not currently protected in perpetuity is an  
420 acceptable mitigation technique instead of off-site afforestation or reforestation  
421 planting, but the forest cover protected must be 2 times the afforestation and  
422 reforestation requirements.

423 [(C) For sites located in existing population centers, use of street trees which meet  
424 landscape or streetscape goals identified in an applicable master plan.]

425 (3) Priority areas and plantings. Afforestation and reforestation should be directed to  
426 stream buffer areas, connections between and additions to forested areas, critical habitat  
427 areas, topographically unstable areas, and land use and road buffers. The use of native  
428 plant materials is preferred.

429 (4) Location requirements. Required reforestation or afforestation must occur in both the  
430 county and the 8-digit watershed in which the project is located, except that if it cannot  
431 be reasonably accomplished in the same county and 8-digit watershed in which the  
432 project is located, then the reforestation or afforestation [may]must occur in a priority 8-  
433 digit watershed in the same county in which the project is located, except that if it cannot

be reasonably accomplished in a priority 8-digit watershed in the same county in which the project is located, then the reforestation or afforestation may occur anywhere in [either ]the county [or watershed ]in which the project is located.

(5) Deadline for plant installation. The afforestation and reforestation requirements under this subsection must be accomplished within one year or [2]two growing seasons after a development project is complete.

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(f) *Special provisions for minimum retention, reforestation and afforestation.*

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(3) If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention and must meet the balance of the remaining requirement through any[in] combination [with]of on-site or off-site reforestation [and]or afforestation [not including landscaping].

\*\*\*

(g) In lieu fee. A person contributing money to the forest conservation fund as an in lieu fee 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 Section 22A-3, occurs on a section of the tract subject to the forest conservation plan. A person may make an in lieu fee payment to the forest conservation fund only if the person satisfactorily demonstrates that:

(1) (A) the requirements for reforestation or afforestation on-site or off-site cannot reasonably be accomplished;

(B) appropriate credits generated by a forest mitigation bank in the same watershed within the County are not available; and

(C) if appropriate credits generated by a forest mitigation bank in the same 8-digit watershed within the County are not available, appropriate credits generated by a forest mitigation bank in a priority 8-digit watershed are not available; and

[(C)](D) if appropriate credits generated by a forest mitigation bank in the same 8-digit watershed or a priority 8-digit watershed within the County are not available, appropriate credits generated by a forest mitigation bank in the County are not available; or

\*\*\*

(h) *Agreements.*

(1) Maintenance agreement. A forest conservation plan must include a 5-year binding agreement for maintenance of all forest conservation areas, including areas of afforestation, reforestation, and existing forest to be retained, as well as any required mitigation plantings. A person subject to the binding agreement may request that the binding agreement be reduced to 3 years if the forest conservation inspector finds that the agreement has been fulfilled, unless the forest conservation plan is within a special protection area. If the forest conservation plan is within a special protection area, the binding maintenance agreement must be for a minimum of 5 years and may not be reduced. The binding maintenance agreement may include watering (as practical), feeding, non-native invasive control, and replanting of areas to be afforested or reforested. A maintenance agreement may also be required for non-native invasive control of forest edge or to control non-native invasive species in adjacent areas that may impact forest conservation. 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.

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

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(g) *Purchasing and selling forest mitigation bank credits.*

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(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 [may]must acquire forest mitigation bank credits from a forest mitigation bank within a priority 8-digit watershed. If forest mitigation bank credits are not available within a priority 8-digit watershed applicants may acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

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

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(e) If the applicant is granted a variance to remove any of the subject trees listed as priority for retention in Section 22A-12(b)(3), the applicant must replant mitigation trees at a minimum ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, regardless of whether those trees are within or outside of forest area, in addition to any reforestation, afforestation, or landscape credit requirements. Mitigation for trees

503 that are part of an historic site or associated with an historic structure is only required for the  
504 removal of trees located outside of forest.

505 ~~[(e)]~~(f) Approval procedures; Conditions. The Planning Board must find that the applicant  
506 has met all requirements of this Section before granting a variance. However, the Planning  
507 Director may grant a variance if the Director is authorized to approve the forest conservation  
508 plan and the applicant meets all requirements of this Section. The Board or Director may impose  
509 appropriate conditions to promote the objectives of this Chapter and protect the public interest.

510 ~~[(f)]~~(g) Notice to State Department of Natural Resources; Right to initiate or intervene in  
511 proceedings.

512 \*\*\*



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reddie Drive – Wheaton, Maryland 20902	
<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>FOREST CONSERVATION – TREES</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: XXXXXXXX</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: Kristin Taddei, Planner III Intake and Regulatory Coordination Division Kristin.Taddei@montgomeryplanning.org</p> <p>Address: 2425 Reddie Drive Wheaton, MD 20902</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 amended in 2021, and approved by the County Council under Method 2 procedures.</p>
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<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
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## CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

### 22A.00.01.01 Purpose

[(a) Purpose.] These regulations identify the steps that an applicant must take to comply with Chapter 22A of the County Code. These regulations were adopted by the Planning Board and approved as regulations by the County Council under Chapter 22A.

### 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.[.] In addition, the *Trees Technical Manual* is a guidance document, adopted by the Planning Board, which provides further clarification of the requirements of Chapter 22A of the Montgomery County Code and these regulations.

### 22A.00.01.03 Definitions

- 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 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.
- 2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.
- 3) “Applicant” means the person who is applying for a development plan, diagrammatic plan, subdivision, floating zone plan, sketch plan, site plan, [sediment control permit, ]project plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
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subdivision, sediment control permit, special exception/conditional use, mandatory referral, or [P]ark development 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.
- 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.]
- [7] 5) “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- [8] 6) “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.
  - (a) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
  - (b) “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) “Conservation threshold” means a specific percentage of a tract [which]that is used in determining reforestation requirements per Sections 22A-12(a) and (f) of the Forest Conservation Law.
- [10] 8) “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.
- [11] 9) “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 .

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- [12]] 10 “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]that should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.
- [13]] 11 “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for approval of a regulated activity.
- [14]] 12 “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.
- [15]] 13 “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.
- [16]] 14 “Development project” means grading or construction activities occurring on a specific tract. This includes redevelopment projects.
- [17]] 15 “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 the latest version of [*Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]the environmental guidelines, or an appropriate master plan; and floodplains.
- 16 “Environmental guidelines” means the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland (M-NCPPC)*, as amended.
- [18]] 17 “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]environmental guidelines.
- [19]] 18 “Extenuating circumstances” means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.
- 19 “Equity focus areas” means geographic areas of Montgomery County characterized by high concentrations of lower-income households, people of color, and individuals who may speak English less than very well. Boundaries are determined by Planning Department staff and are mapped on the Planning Department website.

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- 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. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning
- [23]] 22) “Floodplain, One Hundred-Year” means the area along or adjacent to a 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.
- 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.
- 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.
- 25) “Forest conservation worksheet” means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- 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 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 plan” means a plan that a property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.
- 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 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 long-term protective agreement.

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- 30) “Forest stand delineation” or “FSD” means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity. The FSD is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).
- 31) “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) “Intermittent stream” means a stream defined as intermittent in the latest version of the *[Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]* environmental guidelines.
- 33) “Landscaping credit” 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, so long as the plantings are not required to meet zoning or other requirements. The forest conservation plan must show the dimensions and details for tree planting and landscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native plants or cultivars of native plants.
- 34) “Limits of disturbance” means a clearly designated area within which land disturbance may occur.
- 35) “Maintenance and management agreement” means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.
- 36) “Major amendment to a Forest Conservation Plan” means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal or partial removal of any conservation easement.
- 37) “Minor amendment to a Forest Conservation Plan” means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal or partial removal of any conservation easement.
- 38) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont Region of Maryland. Information on 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.
- 39) “Natural regeneration” means the natural establishment of native trees and other native vegetation.
- 40) “Natural resources inventory” or “NRI” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the

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latest version of [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC)]the environmental guidelines. The NRI is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

- 41) “Offsite” means outside the limits of the areas encompassed by a tract.
- 42) “Onsite” means within the limits of an area encompassed by a tract.
- 43) “Perennial stream” means a stream defined as perennial in the latest version of [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]the environmental guidelines.
- 44) “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.
- 45) “Priority planting area” means areas in which planting must occur when present[unless those areas are not present].
- 46) “Priority retention area” means 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.
- 47) “Qualified professional” means a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.
- 48) “Regulated activity” means any of the following activities:
- (a) Subdivision;
  - (b) Biohealth priority campus plan;
  - [(b)] (c) Site plan;
  - [(c)] (d) Project plan;
  - [(d)] (e) Sketch plan;
  - (f) Floating zone plan;
  - (g) Development plan;
  - [(e)] (h) Special exception/conditional use on a tract of land greater than 40,000 square feet;
  - [(f)] (i) Clearing of more than 5,000 square feet of forest;

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[(g)] (i) Park [D]development project on a tract of land greater than 40,000 square feet;

[(h)] (k) An activity that requires a sediment control permit on a tract of land, individually or cumulatively that [are]is greater than 40,000 square feet; or

[(i)] (j) Mandatory referral on a tract of land greater than 40,000 square feet.

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

50) “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.

51) “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.

52) “Stream buffer” means a strip of land 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 *[Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]the environmental guidelines.*

53) “Subdivision” means the definition of subdivision in Chapter 50 of the Montgomery County Code.

54) “Tract” means:

- (a) The property, or adjacent properties, subject to a development application, the boundaries of which are described by deed or record plat; or
- (b) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.

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

56) “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.



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

- 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 or regulated activities:
- (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, or 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 Chapter 59 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 Chapter 59 of the County code;
  - (6) a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County code;
  - (7) a sediment control permit required under Chapter 19 of the County Code;
  - ~~[(7)]~~(8) clearing or grading conducted on two or more platted contiguous lots that are part of the same project, that collectively total 40,000 square feet or larger, that are graded at the same time, and where sediment control is required under Chapter 19 of the County Code.
  - ~~[(8)]~~(9) a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - ~~[(9)]~~(10) a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;
  - ~~[(10)]~~(11) a mandatory referral; and
  - ~~[(11)]~~(12) 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 include a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of *[Guidelines for Environmental Management of Development in Montgomery*

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County, Maryland (MNCPPC)]the environmental guidelines and the *Trees Technical Manual* (MNCPPC). To be reviewed and approved by the Planning Director.

- (2) 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, a[. A]s applicable, which includes:
  - (a) lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and critical habitats wherever practical;
  - (b) areas of existing forest, areas of forest to be removed, and areas of forest to be retained;
  - (c) afforestation and reforestation areas and planting plan, as required;
  - (d) appropriate protection and maintenance measures; and
  - (e) a timetable for construction and planting.

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

### **Requirements**

A. A Natural Resource Inventory (NRI) application must be considered complete if it contains a complete analysis of existing natural resources and man-made features on a property 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, whichever is less:

- (1) 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 of the [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]environmental guidelines;
- (5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the [*Guidelines for Environmental Management of*

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*Development in Montgomery County, Maryland (MNCPPC)]environmental guidelines or appropriate master plan;*

- (6) Existing one-hundred year floodplains and associated 25' building restriction lines;
- (7) wetlands and their buffers per the latest version of the [*Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]environmental guidelines;*
- (8) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, erodible soils per the list in Appendix C of the [*Guidelines for Environmental Management in Montgomery County, Maryland (MNCPPC)]environmental guidelines, and known serpentinite soils in Montgomery County;*
- (9) rare, threatened or endangered plants or animals observed in the field;
- (10) critical habitat areas observed or documented by the Maryland Department of Natural Resources;
- [(10)] (11) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- [(11)] (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;
- [(12)] (13) Specimen Trees;
- [(13)] (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;
- [(14)] (15) cultural features and historic sites;
- [(15)] (16) a site vicinity map at 1" =2000' which shows the location of the site within a square mile and indicates major roads; [and]
- [(16)] (17) a table containing acreage of wetland, 100-year floodplains, stream buffers, and environmental buffers[.]; and
- [(17)] (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, whichever is less:

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- (1) forest stands and field verified boundaries;
  - (2) a description of each stand including:
    - (a) acreage;
    - (b) dominant and codominant tree species;
    - (c) size class by species;
    - (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;
    - (g) 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; 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, which must also be clearly numbered with corresponding tags in the field;
  - (4) 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, which must also be clearly numbered with corresponding tags in the field;
  - (5) field survey reference points demarked on a plan drawing and in the field;
  - (6) a table containing 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
  - (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) forest stands as determined by dominant species types and priority for retention;
  - (2) stand condition narrative as described in subsection B(2);
- 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.

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E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect or other qualified professional as determined by the Planning Director; 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.

F. A Natural Resources Inventory and Forest Stand Delineation is valid for two years from the date it is approved. If a forest conservation plan or a plan under Section 22A-9 has not been accepted as complete during the two-year validity period, an approved Natural Resources Inventory and Forest Stand Delineation expires at the end of its validity period. An expired Natural Resources Inventory and Forest Stand Delineation may be recertified within one year after the expiration date, if the original plan preparer attests that there are no changes to the size and shape of the application tract, existing conditions, forest acreage, tree canopy, or any other detail of the originally approved Natural Resources Inventory and Forest Stand Delineation. A Natural Resources Inventory and Forest Stand Delineation may only be recertified one time. A new Natural Resources Inventory and Forest Stand Delineation may be required if there are changes to site conditions, applications, plan preparer, or applicant.

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

A. The following areas are considered the highest priority retention areas for 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, slopes over 25 percent (not man-made), erodible soils on slopes of 15% or more, and critical habitats;
- (2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- (3) trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, and endangered species;
- (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;

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- (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 1" caliper or larger and part of a historic site or associated with a historic structure;
  - (b) a tree designated as a national, state, or County 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;
  - (d) trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater; and
  - (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, measured at 4.5 feet above the ground, of 24["inches or greater which will significantly enhance the site through preservation.

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

- A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The F[f]orest C[c]onservation L[l]aw specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants [should]must strive to maximize forest retention whenever practical.
- 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 forests in priority retention areas specified in Section 22A.00.01.07 are not being retained;

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- (3) If forests in 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. 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; and
- (4) Wetlands are priority retention areas.

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 area which extends off-site and is protected.
- (2) Individual trees described as highest priority for retention in subsection 22A.00.01.07A may 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 highest priority planting areas for forest conservation plans with required afforestation and reforestation:
  - (a) environmental buffers; [;]

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- (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 [*Guidelines for Environmental Management for Development in Montgomery County, Maryland* (MNCPPC)]environmental guidelines;[.]
  - (c) establish or enhance forested areas on 100-year floodplains, when appropriate;
  - (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;
  - (e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - (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;
  - (g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way[’s];
  - (h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
  - (i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.
- (3) Planting plans for afforestation and reforestation must include the following:
- (a) 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;
  - (b) appropriate site preparation, protection and/or maintenance measures as described in the latest version of the Trees Technical Manual; and
  - (c) a stocking rate for trees and shrubs and survival requirements, as shown in the following chart:

Size	Number Required (per acre) (1)	Approximate Spacing (feet on center) (2)	Survival Requirements (starting at the end of the [2 <sup>nd</sup> ] 3 <sup>rd</sup> or 5 <sup>th</sup> growing season) (3)
<b>TREES</b>			
¾" to 1" caliper; B&B or container grown (minimum [5] 7 gal.)	200	12' to 15'	75% or 150 per acre(4)
1 ½" to 2" caliper; B&B or container grown	100	15' to 20'	100% or 100 per acre(5)

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(minimum 15 gal.)			
<b>SHRUBS</b>			
18" to 24" height; container grown (minimum 3 gal.)	33	(6)	

**Notes:**

- (1) In certain circumstances, any combination of the above mentioned stocking options 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.
- (2) 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.
- (3) If the tree survival at the end of the 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 will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival 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. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.
- (5) Surviving tree must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.
- (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.
- (7) An alternative methodology to establish planted forest, such as planting smaller trees and shrubs at a higher density, or supplemental planting of live stakes, may be approved by the Planning Director as appropriate to encourage the establishment of an overstory or understory, build resilience against invasive species or deer, or otherwise establish forest ecosystem using the best methodology for the site. However, the density and survival requirements detailed in the table above must be met at a minimum.

**F. Tree Save Plans.**

- (1) Development applications on tracts which impact significant, specimen or champion trees, including those on adjoining properties, are required to submit a tree save plan.
- (2) Preserving significant, 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:

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- (a) Specimen and champion trees must be replaced by a planting plan which may be required to include planting or transplanting of large trees;
- (b) Significant tree stands must be replaced 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 show on-site or off-site trees 6" DBH or greater located along the limits of disturbance if the proposed activity would impact the critical root zone of those trees, and must identify methods to preserve and protect those trees.

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) Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements, including planting and screening required by zoning or other regulatory requirements.
- (3) Newly planted landscape trees, within landscape areas must be 3" minimum caliper stock to be counted toward requirements.

(4) Newly planted trees outside of forest, or designated landscape areas, must be 3" minimum caliper stock to be counted toward requirements.

(5) The area(s) where trees are planted must have adequate soil conditions, volume, and surface area to sustain plantings;

[(5)] (6) Street trees planted within a public right-of-way or along private streets/roads will not receive any credit toward the requirements.

[(6)] (7) 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;
- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.

[(7)] (8) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements only for projects located within an equity focus area as follows:

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

[(8)] (9) Landscaping, retention of tree stand, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:

- (g) sites with tree cover requirements per subsection (3):
  - (i) landscaping areas or retained tree stands of any size may receive full credit for their area; and
  - (ii) individual landscape trees which are retained may receive full credit for the protected area of canopy at 20-years; [and]
  - [(iii) individual trees, or tree stands, which are retained may 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;]
- (h) sites with special provisions for meeting minimum afforestation[forest cover] requirements per Section 22A-12(f) of the Forest Conservation Law:
  - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may 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 receive one quarter credit for their area;
  - (iii) individual non-priority landscape trees may receive one quarter credit for the projected area of their canopy at 20-years;
  - (iv) individual trees which are retained may 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
  - (v) the total credit from these areas must not exceed twenty percent of the overall afforestation requirement for a site.

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## 22A.00.01.09 Forest Conservation Plan Requirements

### A. Preliminary Forest Conservation Plans.

- (1) Development applications that need more than one approval must submit a preliminary forest conservation plan in conjunction with the first approval, unless multiple applications are submitted for simultaneous review and only a final forest conservation plan is required. The preliminary forest conservation 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 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, and mitigation trees, 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;
    - (vi) acreage of forest not in priority retention areas;
    - (vii) acreage of total forest retention in priority retention areas;
    - (viii) acreage of total forest retention not in priority retention areas;
    - (ix) acreage of total forest cleared in priority retention areas;
    - (x) acreage of forest cleared not in priority retention areas;

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- (xi) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;
- (xii) acreage of forest retained, cleared, and planted within wetlands;
- (xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;
- (xiv) acreage of forest retained, cleared, and planted within stream buffers;
- (xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
- (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) 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 with a diameter of 24 inches and greater at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas) , within 50' on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table.
  - (d) retention areas including forest, tree stands and other individual trees to be saved including acreage;
  - (e) a note describing whether on site downed woody material is to be retained and incorporated into retention, afforestation, or reforestation areas to build habitat.

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[(e)] (f) an afforestation and/or reforestation planting plan, if required, which contains:

(i) a note indicating whether soil restoration techniques will be implemented;

[(i)] (ii) location and acreage of areas to be planted;

[(ii)] (iii) an analysis of the suitability of the site for planting and a description of necessary methods;

[(iii)] (iv) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;

[(iv)] (v) a plant materials table including size of plants to be installed and quantities;

[(v)] (vi) planting and inspection schedule which is tied to the construction sequence for the project;

[(vi)] (vii) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c);; and

[(vii)] (viii) a maintenance and management agreement; and

(d) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;

(e) a protection plan which shows:

(i) location of temporary protection devices 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;

(v) a field inspection schedule pursuant to Section 22A.00.01.10;

(vi) location of permanent protection devices; an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of 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 30% or more of the critical root zone is impacted.

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- (f) identification of how the off-site planting requirements will be met either by making a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite;
- (g) If off-site planting is going to occur, the forest conservation plan must include 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).

C. Noticing Requirements for Forest Conservation Plans.

- (1) Applicants that require approval of a forest conservation plan must follow the noticing requirements identified in Chapter Administrative Procedures for Development Review in COMCOR 50/59.00.01.04.

**22A.00.01.10 Inspections**

A. The Planning Department must conduct field inspections of a site subject to an approved forest conservation plan as follows:

- (1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should be to field verify the limits of clearing specified on the approved plan, authorize necessary adjustments, and to authorize necessary stress reduction measures and installation of protection devices);
- (2) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);
- (3) after completion of all construction activities to determine the level of compliance with the approved plan;
- (4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specification);
- (5) after required reforestation and afforestation planting has been completed to verify that the planting is acceptable and to begin the required maintenance and management period;
- (6) Two 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
- (7) At the end of the maintenance and management period to determine the level of compliance with provisions of the planting plan and, if appropriate, authorize release of any financial security.

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- B. The applicant must:
- Request these inspections at the designated points.
  - Submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31<sup>st</sup> and April 30<sup>th</sup> of each year for the duration of the maintenance and management period.
- C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10.A.
- D. For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

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

- A. A request for exemption from forest conservation plan requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law must be in writing to the Planning Director.
- B. The following information must be provided as part of an exemption request:
- (1) An application form;
  - (2) A written request detailing how the exemption applies to the proposed plan;
  - (3) A Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06 and the environmental guidelines in the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
  - (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
  - (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.
- C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
- (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if information is submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show existing and proposed topography and forest boundaries;
  - (2) agricultural exemptions per subsection 22A-5(b) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries;
  - (3) commercial logging and timber harvesting exemptions per subsection 22A-5(d) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and



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- (4) applications for other exemptions, if the site being developed does not contain any forest, specimen or significant trees, existing conservation easements, or environmentally sensitive features, and a plan showing existing features and topography is submitted with the exemption request.
- D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.
- E. The Planning Board, or Planning Director, may require a person failing to file an exemption request per section 22A-4 of the Forest Conservation Law, or found in noncompliance with an exemption or a declaration of intent to:
- (1) Submit a Forest Conservation Plan and meet the requirements in the Forest Conservation Law for a regulated activity;
  - (2) Pay a noncompliance fee;
  - (3) Be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and/or
  - (4) Submit a request to be exempt from submitting a forest conservation plan.
- F. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file an exemption by a person required to file is a violation of this subtitle.
- G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation automatically expires without notice.
- H. A confirmed exemption may not be amended. A new exemption must be submitted for review in order to make any changes.

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

- A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation Plan. A declaration of intent is required for the following exemptions from submitting a forest conservation plan;
- (1) An activity conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner, if the activity complies with subsection 22A-5(a) of the Forest Conservation Law;

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- (2) An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;
  - (3) A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;
  - (4) A real estate transfer subject to subsection 22A-5(m) of the Forest Conservation Law.
  - (5) A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;
  - (6) An activity involving the demolition of an existing structure that complies with subsection 22A-5(x) of the Forest Conservation Law.
- B. The declaration of intent must provide Planning Department staff with access to the property to verify compliance with the declaration.
- C. The declaration of intent is in effect for 5 years after the date defined in the declaration of intent.
- D. The filing of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:
  - (1) Does not conflict with the purpose of any existing declaration of intent; and
  - (2) Complies with the applicable requirements for an exempted activity.
- E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:
  - (1) the exemption immediately terminates without any action by the Planning Board;
  - (2) the Planning Director may require approval of a Forest Conservation Plan for the property; and
  - (3) the Planning Director, or Planning Board may take other enforcement actions, including those listed under Section 22A-17(a) of Article III of the Forest Conservation Law.
- F. An applicant may apply for a regulated activity on the area of the property not covered under the declaration of intent if the requirements of Section 22A-5 are satisfied.

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

- A. Forest Conservation Plan Amendments.
  - (1) Minor amendments which do not result in more than a total of 5,000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and substituting one area of forest, for retention of another of equal or greater size and value.
  - (2) Major amendments which entails:

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- (a) more than a total of 5,000 square feet of additional forest clearing must be approved by Planning Board or Planning Director (depending on who approved the original plan), or
- (b) Removal of any conservation easement must be approved by the Planning Board.

(3) All Forest Conservation Plan amendment applications must conform to the requirements of the Forest Conservation Law and regulations in effect at the time of submission.

[B. Exemptions from Submitting a Forest Conservation Plan

- (1) A request to amend an exemption from submitting a forest conservation plan must be submitted to and approved by the Planning Director.]

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

A. Maintenance Agreements.

- (1) A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law must include in the forest conservation plan a binding maintenance agreement for a minimum length of 5 years unless reduced pursuant to Section 22A-12[(g)](h)(1) of the Forest Conservation Law. The binding maintenance agreement for forest conservation plans within Special Protection Areas must have a minimum length of 5 years and cannot be reduced.
- (2) The maintenance agreement must be submitted and approved by the Planning Director before the start of any land disturbing activities.
- (3) The maintenance agreement must detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest.
- (4) The “obligee,” or person required to conduct the afforestation or reforestation must present evidence of a legal right to implement the proposed maintenance agreement on a selected property by providing:
  - (a) an executed deed conveying title to a selected property to the obligee;
  - (b) an executed conservation easement agreement;
  - (c) written evidence of the landowner’s consent to the use of a selected property;
  - (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected property; or
  - (e) other written evidence of a possessory or ownership interest in a selected property.
- (5) The Planning Director must be a signatory to the maintenance agreement, or must be designated a third-party beneficiary of the agreement.

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- (6) The maintenance agreement must provide Planning Department staff with access to the property to verify compliance with the Forest Conservation Plan.
- (7) If the plantings have not met the survival requirements established in section 22A.00.01.08 or required control of non-native and invasive vegetation, reinforcement plantings and/or additional non-native invasive control will be required, and the maintenance period may be extended.

**B. Bonding.**

- (1) Financial security must be provided per subsection 22A-12(i) of the Forest Conservation Law.
- (2) Financial security must be provided before authorization is granted to begin any clearing, grading, demolition, or land disturbing activities.  
The value of the financial security must equal the in-lieu fee applicable at the time of land disturbance, or be based on a cost estimate, approved by the Planning Director, for implementing the planting and maintenance of trees and shrubs (including mitigation trees) and control of non-native and invasive plants.
- (3) The financial security must be in force until all measure for reforestation, afforestation, and maintenance requirements have been met to the satisfaction of the Planning Director.
- (4) A surety bond or other alternative form of security must not be canceled by the surety, bank or other issuing entity unless both of the following conditions are satisfied:
  - (a) the surety notifies the Planning Director and the applicant of its intent to cancel the bond, in writing, by registered mail, not less than 90 days before cancellation; and
  - (b) at least 45 days before the cancellation date indicated in the notice, the applicant files a commitment from a surety, bank, or other issuing entity to provide a substitute security which must take effect on the cancellation date indicated in the notice.
- (5) Release of part of the financial security may be authorized by the Planning Department enforcement and monitoring staff after planting has been done. Any remaining financial security must be at least 50 percent, or greater, than the in-lieu fee that was in effect at the time of the first land disturbance.
- (6) An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.
- (7) Planning Department enforcement and monitoring staff must determine whether a partial release should occur, after planting has occurred, and how much, based on the following factors:
  - (a) evidence of deer browse on existing trees and forest;
  - (b) adherence to the planting plan;
  - (c) condition of the planted material;
  - (d) time of year when the planting has occurred and whether or not watering will occur;
  - (e) size of planting stock; and

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- (f) provisions of the protection and maintenance plan, including required control of non-native invasive vegetation.
- (8) Planning staff must release the financial security if the applicant requests a final inspection and the Planning staff determines that survival requirements have been met at the end of the maintenance period.

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

An applicant must have in effect at all times, approved long-term protective measures as provided in subsection 22A-12(h)(2) of the Forest Conservation Law, to retain as forest, all land forested, afforested, or reforested and all unforested lands left in an undisturbed condition per section 22A-12(b) of the Forest Conservation Law and limit the uses of those areas which are consistent with forest conservation.

- (1) Long-term protective measures may include, but are not limited to:
  - (a) Conservation easements or covenants;
  - (b) Deed restrictions; and
  - (c) Dedication to M-NCPPC Parks as a conservation area.
- (2) A forest management plan may be included as part of a long-term protective agreement if the Planning Director finds it is consistent with County forest conservation objectives.

[The *Trees Technical Manual* is a guidance document, adopted by the Planning Board, which provides further clarification of the requirements of Chapter 22A of the Montgomery County Code and these regulations.]