Sections 22A-3, 22A-4, 22A-5, 22A-12, 22A-13, and 22A-30 are amended as follows:

Sec. 22A-3. Definitions.

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In this Chapter, the following terms have the meanings indicated:

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Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest does not include an orchard. Forest includes:

(1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and

(2) forest areas that previously met the above definition of forest but have been cut[but not cleared].

[*Forest* does not include an orchard.]

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 forest 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.

***

Specimen tree means a tree that is a 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] Forest Conservation Technical Manual.

***

Recreational facility means publicly owned and maintained property that promotes recreation, social connection, or conservation for the public access and use. It may include infrastructure that supports the protection, maintenance, access and use of these activities, as well as park amenities including, but not limited to, any of the following:

(1) Historic and cultural resources, such as: buildings, structures, facilities, and artwork;

(2) Infrastructure elements, such as: buildings, shelters, site furnishings, utilities, drainage, outfalls, walls, roadways, parking, and associated elements;

(3) Recreational amenities, such as: courts, athletic fields, playgrounds, nature play, maintained turf areas, trails, plazas, kiosks, informal play areas, and associated facilities;

(4) Accessibility features, such as: trails, trailheads, boardwalks, walkways, stairs, ramps, public water access points, and associated infrastructure;

(5) Environmental features associated with the facility, such as: stormwater management facilities, ponds, storm drain outfalls, riparian enhancements, managed open spaces, and meadows.

Recreational facility modification means the replacement, repair, upgrade, conversion, and/or realignment of an existing recreational facility.

***

Solar Photovoltaic Facility means an area containing the footprint of ground-mounted or freestanding solar energy generation equipment that is [approved by the Maryland Public Service Commission] subject to Mandatory Referral review under the Maryland Code, Land Use Article, Section 20-301.

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Sec. 22A-4. Applicability.

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(b) a person required by law to obtain approval of a special exception or a conditional use on a tract of land 40,000 square feet or larger, or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a);

***

Notwithstanding the above, any persons who expect[s] to cut, clear, or grade more than 5,000 square feet of forest within a 5-year period, or any champion tree must request an exemption under 22A-5 or must comply with the requirements of Article II. Any person who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6 or 22A-8 must receive confirmation from the Planning Director that the activity is in fact exempt from Article II. Performing any cutting, clearing, or grading before the Director confirms that an exemption applies is a violation of this Chapter.

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to[:]the following activities. A person planning to conduct any of the following activities must submit an application for review by the Planning Director. An application for any of the following exemptions cannot be confirmed if an approved forest conservation plan exists for the property.

(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

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

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

(B) any forest in a stream buffer;

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

(D) any specimen or champion tree unless a Tree Save Plan is approved under Section 22A-6(a); or

(E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

(4) is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the cutting, clearing, or grading of forest;

(b) an agricultural activity if:

(1) the activity is exempt from the requirements to obtain a sediment control permit under Section 19-2(b)(2);

(2) the activity is subject to a declaration of intent filed with the Planning Director stating that the agricultural areas will remain in commercial agriculture for at least 5 years; and

(3) construction of agricultural support buildings (as defined in Chapter 8 of the Montgomery County Code) and related activities that are exempt from needing a building permit and are built using best management practices;

***

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

(A) is completed before July 1, 1991, or is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is subject to a declaration of intent filed with the Planning Director stating that the property will not be the subject of an application for development within 5 years after the sediment control permit has been issued;

(B) has received approval from the County Arborist or designee that the logging or timber harvesting plan is not inconsistent with County forest management objectives and is otherwise appropriate; and

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

(2) The Department of Permitting Services must send the Planning Director a copy of all sediment control permits issued for commercial logging and timber harvesting operations.

(3) The requirements of this subsection apply to commercial logging and timber harvesting operations on agricultural land;

***

(t) a modification to a:

(1) non-residential developed property if

…

(C) the development does not occur within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines or to reduce or remove impervious surfaces;

…

(2) residential developed property if:

…

(B) the development does not occur within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines or to reduce or remove impervious surfaces;

…

(3) publicly-owned parkland property if:

(A) the property is publicly maintained for outdoor public recreation access and use and the modification is being made to an existing recreational facility;

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

(C) the modification does not result in the cutting, clearing, or grading of more than 1,000 square feet of forest in a stream buffer or any forest located on property in a special protection area;

(D) the modification does not increase the developed area within the environmental buffer by more than 5,000 square feet, or include any new buildings within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines and improvements for ADA-access;

(E) all proposed encroachments within an environmental buffer shall be mitigated at a 1:1 ratio on the property, 2:1 ratio within the same watershed, or 3:1 ratio outside of the watershed;

(F) the development does not propose any residential or commercial uses; and

(G) the modification does not increase the individual recreational facility being modified by more than 50 percent.

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Sec. 22A-12. Retention[, afforestation, and reforestation] and planting requirements.

***(c) [Reforestation. The forest conservation plan must provide for reforestation as follows:] Stream Valley Buffer Planting.

[(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, special protection area, or the Patuxent Primary Management Area (PMA); 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, special protection area, or the Patuxent Primary Management Area (PMA).

(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 ½ 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, special protection area, or the Patuxent Primary Management Area (PMA); 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, special protection area, or the Patuxent Primary Management Area (PMA).

(3) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

(4) A regulated activity under this Chapter within the net tract area that occurs wholely or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.]

(1) All unforested stream valley buffers on site must be planted, except if the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that:

(i) forest planting in the stream valley buffer would be in conflict with allowable uses as established in the latest version of the environmental guidelines;

(ii) the stream valley buffer is located on park property stewarded by the Department of Parks, and the forest planting would conflict with the mission and established stewardship practices of the Department of Parks; or

(iii) the stream valley buffer is not suitable to establish and retain required planting materials, in which case a substitute environmental protective measure must be implemented.

(d) Afforestation and Reforestation.

(1) Afforestation

(i) 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.

(ii) Afforestation must be accomplished by the planting of forest cover, unless if 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, in which case afforestation requirements may be satisfied by tree cover.

(iii) Solar photovoltaic facilities may not be subject to afforestation requirements in this chapter. Solar photovoltaic facilities are subject to all other requirements in this chapter.

(2) Reforestation

(i) 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, special protection area, or the Patuxent Primary Management Area (PMA); 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, special protection area, or the Patuxent Primary Management Area (PMA).

(ii) 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 ½ 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, special protection area, or the Patuxent Primary Management Area (PMA); 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, special protection area, or the Patuxent Primary Management Area (PMA).

(iii) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited as a ½ acre against the total number of acres required to be reforested.

(iv) A regulated activity under this Chapter within the net tract area that occurs entirely or partly in areas regulated as nontidal wetlands is subject to both the nontidal wetland regulatory requirements and the requirements of this Chapter. However, any area of forest within the net tract area that is retained, including forest in nontidal wetlands, must be counted towards forest conservation requirements under this Chapter.

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(e) Standards for reforestation and afforestation.

(1) General requirements.

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[(B) Stream valley buffers. All unforested stream valley buffers on site must be afforested or reforested, except if the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that:

(i) afforestation or reforestation in the stream valley buffer would be in conflict with allowable uses as established in the latest version of the environmental guidelines;

(ii) the stream valley buffer is located on park property stewarded by the Department of Parks, and the afforestation or reforestation would conflict with the mission and established stewardship practices of the Department of Parks; or

(iii) the stream valley buffer is not suitable to establish and retain required planting materials, in which case a substitute environmental protective measure must be implemented.

All unforested stream valley buffers in a special protection area and stream valley buffers within the Patuxent Primary Management Area must be afforested as established in the latest version of the environmental guidelines.]

[(C)](B) *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:

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

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Sec[s]. 22A-13. Forest mitigation banks.

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(a) Creating a forest mitigation bank. A person may create a forest mitigation bank from which applicants may buy credits.

(b) The area of land included in the bank must be at least one acre. Stream valley buffers must not be included in the acreage for existing forest banks.

(c) A forest mitigation bank must [have native plants] be dominated by native and non-invasive woody plants. Non-native invasive plants must be removed and treated according to the maintenance and management agreement.

***

(e) The forest mitigation bank plan must include:

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

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

(3) draft easements, covenants, or deed restrictions for the area included in the forest mitigation bank; and

(4) the number of forest mitigation bank credits available for sale as either:

(A) existing forest credits, where one acre of forest mitigation bank credit equals 2 acres of existing forest; or

(B) planted forest credits, where one acre of forest mitigation bank credit equals one acre of planted forest <u>including approved natural regenerated forest with supplemental planting</u>.

***

Sec. 22A-16. Penalties and other remedies.

(a) Class A violation. Any violation of this Chapter or any regulations adopted under it is a Class A civil violation. The maximum civil fine is [$1,000] <u>$2,500</u>. Each day a violation continues may be treated as a separate violation under this Chapter

Sec. 22A-30. County Arborist.

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

(1) develop a comprehensive County conservation and management strategy, including programs designed to promote afforestation and reforestation in the County, and the survival of historic trees and any endangered tree species;

(2) advise the County Executive and County Council on the effectiveness of County programs for controlling tree pests and diseases;

(3) review and approve proposed commercial logging and timber harvesting operations under Article II;

(4) review variance requests and reports under Article II subject to referral requirements;

(5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and

(6) any other duties required by law or assigned by the County Executive.