Montgomery Planning

STAFF REPORT: 2026 PROPOSED 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 align the Montgomery County law with recent changes to the enabling state legislation and incorporate staff recommendations. Such changes include addition of a parkland property exemption, removal of retention credit, codifying forest bank requirements, updating definitions in the law, and addressing noticing requirements from SB526. 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
Planning Board
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Summary:

Changes to Chapter 22A of the Montgomery County Code (the Forest Conservation Law) are needed primarily to align the Forest Conservation Law with enabling state law. New changes to the state Forest Conservation Act came into effect July 1, 2026. Other changes recommended by staff are intended to strengthen and clarify sections of the Forest Conservation Law and Forest Conservation - Trees Regulations.

Staff is recommending approval of the recommended changes to Chapter 22A 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 2: SUMMARY OF PROPOSED CHANGES

The substantive changes proposed by this amendment include:

(1) addition of a parkland property exemption;

(2) removal of retention credit in Chapter 22A-12;

(3) codifying forest bank requirements;

(4) updating definitions in the law; and,

(5) addressing noticing requirements from SB526

The other proposed changes consist of more technical additions, deletions and clarifications to the Forest Conservation Law, as summarized below. A more detailed discussion and analysis of all proposed changes is in the next section titled **Analysis.**

SECTION 3: DETAILED DISCUSSION OF CHANGES

PROPOSED CHANGES TO THE FOREST CONSERVATION LAW

SECTION 22A-3 DEFINITIONS.

Proposal

Lines 6 through 16 adds to the definition of forest, "Forest does not include an orchard." This phrase is removed from the end of the definition.

Analysis

This change is meant to make the definition more succinct.

Proposal

Line 14 adds that forest includes forest areas that "previously met the above definitions of forest but have been cut." Line 15 removes "but not cleared" from the definition.

Analysis

The definition "cut but not cleared" has proved opaque, and this change is meant to provide clarity.

Proposal

Lines 18 to 22 add the definition of "Forest Clearing."

Analysis

This definition is already in the Forest Conservation Regulations, and staff recommended adding it to the law for ease of understanding.

Proposal

Lines 29 to 46 adds the definition of "Recreational facility."

Analysis

This definition adds clarification for the addition of the parkland property exemption in Section 22A-5.

Proposal

Lines 45 to 46 add the definition of "Recreational facility modification"

Analysis

Similar to above, this definition adds clarification for the addition of the parkland property exemption in Section 22A-5.

Proposal

Lines 50 and 51 changes the definition of “Solar Photovoltaic Facility” to refer to a property subject to Mandatory Referral, rather than one that is approved by the Maryland Public Service Commission.

Analysis

Planning Staff crafted the definition for Solar Photovoltaic Facilities in 2024, when the term was first introduced in the Forest Conservation Act. Since this time, the state has created their own standard for such facilities. The change in definition reflects this new standard.

Proposal

Line 26 changes references from the Trees Technical Manual to the Forest Conservation Technical Manual

Analysis

Staff reviewed and revised the previous Technical Manual in 2026. The Forest Conservation Technical Manual was approved with this new title and the law will now reflect this.

SECTION 22A-4 APPLICABILITY

PROPOSAL

Line 56 adds that a special exception or a conditional use is applicable if the tract of land is 40,000 square feet or larger.

Analysis

Currently, the law may be interpreted as that any special exception or condition use is subject, regardless of the tract size. The revision clarifies that the 40,000 sq ft threshold applies to special exceptions, conditional uses, and sediment control permits

PROPOSAL

Line 61 adds “within a 5-year period” to the Applicability

Analysis

This change is to prevent property owners from clearing small amounts cumulatively to avoid triggering the law and creates a standard and timeframe.

SECTION 22A-5 EXEMPTIONS.

Proposal

Lines 68 to 71 specify that one must apply for an exemption and that exemptions cannot apply if there is an existing Forest Conservation Plan on the property.

Analysis

This change is to remove any confusion that one must either apply for a Forest Conservation Plan or Forest Conservation Exemption if they conduct an activity that falls under the Applicability section.

Proposal

Line 81 removes “which must submit a water quality plan” from 22A-5(a)(3)(C)

Analysis

This change is intended to reduce redundancy in this provision. All relevant properties that are within a special protection area must submit a Water Quality Plan. The intent of this revision is to clear up that there is no distinction between "Special Protection Area properties with a Water Quality Plan" and "Special Protection Area properties without a Water Quality Plan."

Proposal

Lines 96 to 98 add specificity to 22A-5(b)(3), tying the construction of agricultural support buildings to the definition in Chapter 8 of the County Code, and related activities exempt from needing a building permit.

Analysis

This change provides clarity and a standard for agricultural support buildings and related activities.

Proposal

Lines 105 to 106 adds the requirement that a commercial logging and timber harvest operation must be subject to a declaration of intent.

Analysis

This ensures that an applicant that will pursue commercial logging and timber harvest has documented their proposed activity.

Proposal

Lines 120 to 142 add new exemption language to chapter 22A-5(t), which exempt modifications to publicly owned parkland property from a Forest Conservation Plan. The exemption applies to applications that fall under the definitions added above for “recreational facility” and “recreational facility modification.”

Analysis

Montgomery Parks began as a stream valley buffer system. Beyond stewarding ecological assets throughout the county, they provide recreational infrastructure to its residents. As such, many facilities are in the stream valley buffer. This exemption ensures that Parks can build and maintain recreational facilities within their system and that forest is protected and replanted as a result of recreational facilities modifications.

Updated Proposal with Community Input

Lines 124 to 125 and 130 to 131 add the phrases "or to reduce or remove impervious surfaces" to portions of the (t) exemption.

Analysis

A member of the development community has asked for the inclusion of language in 22A-5(t) for modifications to allow for adjustments to be made to existing parking for ADA requirements.

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

Proposal

Line 144 adds "and planting requirements" to the section title

Analysis

Planning Staff recommend moving the stream valley buffer planting requirements earlier in the section so applicants are aware that all buffers must be planted in addition to reforestation and afforestation requirements. The title change reflects all planting requirements.

Proposal

Lines 145 and 146 remove the "Reforestation" subsection (c) and replace it with "Stream Valley Buffer Planting. Lines 147 to 181 replace reforestation requirements with stream valley buffer planting requirements.

Analysis

This change is meant to make clear that the stream valley buffer requirements must occur apart from reforestation and afforestation requirements. The reforestation requirements will move to subsection (d) of this section.

Proposal

With the moving of Stream Valley Buffer "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."

Analysis

This provision existed before the No Net Loss revision of the Forest Conservation Law and is redundant with other requirements for stream valley buffer planting.

Proposal

Lines 198 to 218 add reforestation requirements, moving them from subsection (c) to subsection (d)(2).

Analysis

This change brings reforestation and afforestation requirements under one subsection for ease of understanding.

Proposal

Strike current provision 22A-12(c)(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."

Updated Proposal with Community Input

Retain the provision and replace with the following: "Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited as a 1/2 acre against the total number of acres required to be reforested."

Analysis

Currently, allowing for a retention credit means that large amounts of forest can be removed on a development plan without mitigation. Since this provision credits acres of forest retained, this means that the forest removed will not be mitigated if a retention threshold is met and exceeded. Allowing for removal of forest without mitigation prevents Montgomery County from fully meeting its no let loss requirement. As an example, there have been a number of large projects in the last few years that could remove 40 acres of forest or more without mitigating due to this provision. Removing this provision in its entirety would enable Montgomery County to ensure that the no net loss of forest requirement is met.

After receiving input from the development community concerned about the impact of this change on development and the potential disincentive of preserving existing forest, staff propose an updated provision that provides a ½ acre credit for each acre of forest retained above the retention threshold. This updated provision provides incentive to retain forest on-site, while providing mitigation for forest removed. We are optimistic that the ½ acre credit will strike the balance of meeting the no net loss requirements and incentivizing forest retention. See section 4. Community Comments and Responses for more information.

Proposal

Lines 223 to 239 remove Stream Valley Buffer requirements and move them into subsection (c)

Analysis

As above, this is to highlight the requirements of stream valley buffer requirements and ensure applicants understand they are required after the completion of reforestation and afforestation requirements.

SECTION 22A-13. FOREST MITIGATION BANKS

Proposal

Lines 254 to 255 adds that Stream Valley Buffers must not be included in the acreage for existing forest banks

Analysis

This provision codifies a Planning Board memo issued in 2014 and provides clarity to forest bank applicants.

Proposal

Lines 256 to 258 clarifies that a forest mitigation bank must be dominated by native and non-invasive woody plants. Further, this change stipulates that non-native invasive plants must be removed, consistent with a maintenance and management agreement.

Analysis

Increasingly, Maryland and Montgomery County forests are experiencing heavy pressure from non-native invasive species, which threatens the overall health of our forests. Forest Conservation Inspectors ask that forest banks meet a high quality of forest before selling credits. This ensures that forest banks have diverse native species and are not under non-native invasive pressure.

Updated Proposal with Community Input

Add " including approved natural regenerated forest with supplemental planting" in 22A-13 (e)(4)(B)

Analysis

A community member advocated for the inclusion of “newly created” forest in the forest banking section of the law, to account for natural regeneration of forest. Staff agree that successful and approved natural regeneration can be given the same credit as planted forest versus existing forest from a forest banking perspective. Staff have incorporated natural regeneration into the Forest Conservation Technical Manual and to the section regarding forest banks. Since planted and naturally regenerated forest banks must have successful survivability before they can be approved as a forest

bank, Staff believes that is an adequate backstop to ensure the natural regeneration is successful prior to bank approval.

SECTION 22A-16. PENALTIES AND OTHER REMEDIES

Proposal

Line 276 increases the maximum civil fine in 22A-16(a) from $1,000 to $2,500.

Analysis

This change was recommended by a community member as a deterrent for violations. The maximum civil fine has not increased in a number of years, and the County has recently increased the allowable maximum fine. Increasing the maximum amount gives inspectors flexibility to issue more severe fines for more egregious violations. Staff believe, therefore, it is appropriate to increase the maximum fine.

SECTION 22A-30. COUNTY ARBORIST

Proposal

Line 271 adds "subject to referral requirements" to Section 22A-30(c)(4) for the review of variance requests.

Analysis

This change is meant to provide clarity for variance requests.

PROPOSED CHANGES TO THE FOREST CONSERVATION - TREES REGULATIONS

SECTION 22A.00.01.08 GENERAL FOREST CONSERVATION PLAN PROVISIONS

Proposal

State that Planning staff may show trees 6-inches or greater on Forest Conservation Plans, rather than requiring this to be shown on tree save plans.

Analysis

Staff already have some discretion in requiring what to show on Forest Conservation Plans. Often, at the juncture of showing such trees on a plan, the limit of disturbance cannot be changed. This change endeavors to remove an added expense after a plan has been approved by the Planning Board.

Proposal

Change landscaping credit formula to either the projected area of their canopy at 20 years or the current area of their canopy, whichever is greater

Analysis

This change is intended to incentivize protection of larger trees but also continue to protect smaller trees.

Proposal

Remove subsection (b) on landscape credit for sites with special provisions for meeting minimum requirements per Section 22A-12(f) of the Forest Conservation Law

Analysis

This provision has a limited application. Removing it from the law prioritizes forest over landscaping and ensures that forest planting is pursued.

Proposal

Generally, in the regulations, we align section and subsection names to be correct, write out “inches” and “feet” to replace quotation mark and apostrophe notations for clarity, and replace “Trees Technical Manual” to “Forest Conservation Technical Manual.”

Analysis

These changes are meant to create a clear, concise read of the regulations. Further, the Environment and Climate division revised the Forest Conservation Technical Manual in 2026. The new title is now reflected in the law.

SECTION 4: COMMUNITY COMMENTS AND RESPONSES

Staff conducted an environmental stakeholders focus group on Friday, September 4th. Changes to Chapter 22A of the County Code and Chapter 22A of the Code of Montgomery County Regulations were presented to stakeholders-including the development community, environmental interest groups and government agencies. Their comments and Staff responses are outlined below.

REMOVAL OF THE RETENTION CREDIT

Staff have proposed to remove provision Chapter 22A-12(c)(3), which gives a retention credit for each acre of forest retained on the net tract area above the applicable forest conservation threshold. The proposal to remove this credit mirrors the state law, since this provision was removed from the State Forest Conservation Act. Further, in the annual report to the Department of Natural Resources, Staff observed that projects with large net tract areas could remove large amounts of forest, retain forest, and have no planting requirement. For example, one project in fiscal year 2025 removed 45 acres of forest, retained 125 acres, and had no planting requirement. Due to this, along with other applications with large amounts of forest retention, across all projects in FY25, there was a deficit of 21.3 acres of forest cleared vs. forest planted. This means that the county did not meet its No Net Loss goal.

In the community comment period, Staff heard from three development firms that they opposed the removal of the retention credit. The development community thought elimination of the retention credit would disincentivize protection of existing forest above the conservation threshold. Staff cannot leave the retention credit as is because it inhibits Planning's ability to meet our no net loss requirements. However, after looking at preliminary numbers, allowing a 1/2 acre of credit for every 1 acre of forest retained above the threshold may enable the department to meet no net loss.

CREATION OF NEW SUBSECTION IN CHAPTER 22A-12

One comment expressed concern that the requirement to plant forest in Stream Valley Buffers was not consistent with the state law. However, this change was to make clear that such planting is required in addition to afforestation and reforestation requirements. Placing Stream Valley Buffer planting requirements in subsection 22A-12(c) is consistent with MD Natural Resources Code § 5-1606(b)(2), which states, "Upon meeting the reforestation and afforestation requirements in this section, all unforested riparian buffers on site shall be afforested and reforested…"

REQUEST TO INCLUDE INFORMATION REGARDING PRIMARY NESTING SEASON

One community member expressed concern for construction that takes place during Primary Nesting Season, which endangers bird species. They suggested that forest clearing should be avoided at this time. Staff will work to create guidelines for applicants based on state law, perhaps as a condition of approval.

CONCERN THAT THE NEW PARKLAND EXEMPTION WOULD RESULT IN FURTHER FOREST LOSS

A few individual constituents and environmental interest groups expressed concern that the new recreational facility modification would result in forest loss. Staff assured commentors that Parks are a stream valley buffer-based system. Infrastructure for parks therefore often ends up in buffers and parks need to periodically update their facilities for the safety and use of residents. This exemption ensures they can do so and ensures that some forest is protected. The exemption is for existing facilities and allows for updating and maintaining these facilities. Guardrails are in place for clearing and mitigation. Overall, mitigation required is part of exemption and offsets impact to existing forest or is minimized.

Another related concern is that replacement ratios should be higher than 1:1 on-site mitigation. This ratio is standard and is used in review of all plans. Staff think it is appropriate because this ratio ensures the replacement of forest where it is removed so the benefit is occurring in the same area. The higher ratios are to disincentivize off-site mitigation and removal of forest in a Stream Valley Buffer.

CHANGE "NO NET LOSS" OF FOREST TO "GROSS GAIN" OR "NO LOSS" OF FOREST

Environmental interest groups requested a change to the No Net Loss goal of the Forest Conservation Law. Montgomery County is a highly developed, populated county. We are balancing a number of priorities-housing, biking and pedestrian infrastructure and others. The Forest Conservation Law as written is meant to balance the development needs of the county with preservation and planting of forest. We believe No Net Loss allows room for development needed in this county while preserving ecological benefits.

CHANGE TO APPLICABILITY AND EXEMPTIONS TO PROTECT MORE FOREST

An Environmental Interest Group recommended greatly increasing the scope of the applicability section, to include properties as small as 5,000 square feet. Further, they recommended reducing net tract areas considered in exemptions, or removing exemptions all together, so as to protect more forest. Staff are not considering changes in applicability or removal of exemptions at this time because they provide a balance between environmental benefits and ability of people to reasonably utilize their property. Providing exemptions is in compliance with the state Forest Conservation Act.

SECTION 5: 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

ATTACHMENT C: SUMMARY OF COMMUNITY RESPONSES AND STAFF RESPONSES