

**MEMORANDUM**

TO: County Council

FROM: *AM* Amanda Mihill, Legislative Analyst  
*MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 37-07, Forest Conservation – Amendments

Bill 37-07, Forest Conservation – Amendments, sponsored by the Council President at the request of the Planning Board, is scheduled to be introduced on December 11, 2007. A public hearing is tentatively scheduled for January 22 at 7:30 p.m.

Bill 37-07 would revise the forest conservation law in numerous ways. Councilmember Elrich expects to offer a further set of amendments (see ©68-98).

This packet contains

Bill 37-07

Memo from Planning Board Chair

Amendments by Councilmember Elrich

Circle

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Bill No. 37-07  
Concerning: Forest Conservation –  
Amendments  
Revised: 10/19/07 Draft No. 2  
Introduced: 12/11/07  
Expires: June 11, 2009  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

### AN ACT to:

- (1) remove certain exemptions from the Forest Conservation Law;
- (2) require certain people to submit to certain level of reviews when applying to the Planning Board for certain plans;
- (3) establish criteria and requirements for certain levels of review;
- (4) revise certain retention, afforestation, and reforestation requirements;
- (5) modify the management periods for planted forests;
- (6) revise certain financial security requirements;
- (7) revise certain inspection requirements;
- (8) revise certain appeal procedures;
- (9) revise certain variance requirements;
- (10) modify the maintenance period for forest mitigation banks and conservation areas;
- (11) repeal certain provisions relating to the Forest Conservation Advisory Committee;
- (12) repeal certain provisions relating to the County Arborist; and
- (13) generally amend the County forest conservation law.

### By amending

Montgomery County Code  
Chapter 22A, Forest Conservation  
Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19 through 22A-21,  
22A-26, 22A-27, 22A-30, 22A-31

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1           **Sec. 1. Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19**  
 2 **through 22A-21, 22A-26, 22A-27, 22A-30, 22A-31 are amended as follows:**

3 **22A-2. Findings and purpose.**

4           (a) *Findings.* The County Council finds that trees and forest cover  
 5 constitute an important natural resource. [Trees filter] Forest filters  
 6 groundwater, reduce surface runoff, help alleviate flooding, and  
 7 supply necessary habitat for wildlife. [They] Trees cleanse the air,  
 8 offset the heat island effects of urban development, and reduce energy  
 9 needs. They improve the quality of life in a community by providing  
 10 for recreation, compatibility between different land uses, and aesthetic  
 11 appeal. The Council finds that [tree] forest loss as a result of  
 12 development and other land disturbing activities is a serious problem  
 13 in the County.

14           (b) *Purpose.* The [purpose] purposes of this Chapter [is] are:

- 15           (1) save, maintain, and plant trees and forested areas for the benefit  
 16 of County residents and future generations;
- 17           (2) establish procedures, standards, and requirements to minimize  
 18 [tree] forest loss as a result of development and to protect trees  
 19 and forests during and after construction or other land  
 20 disturbing activities;
- 21           (3) maximize forest retention;
- 22           (4) establish procedures, standards, and requirements for  
 23 afforestation and reforestation of land subject to an application  
 24 for development approval or a sediment control permit;
- 25           [(4)] (5) establish a fund for future [tree] forest conservation projects,  
 26 including afforestation and reforestation; and



54 (3) will not circumvent the requirements of this Chapter.

55

\* \* \*

56 Environmental Buffer means a wetland, wetland buffer, 100-year floodplain,  
57 and a perennial or intermittent stream and stream buffer. An environmental  
58 buffer may also include a hydraulically connected steep slope and erodible  
59 soils.

60 [*Equestrian Facility*: Any building, structure, or land area that is primarily  
61 used for the care, breeding, boarding, rental, riding, sport eventing, or  
62 training of horses or ponies, the teaching of equestrian skills, or competitive  
63 equestrian events.]

64

\* \* \*

65 *Forest* means a biological community dominated by trees and other woody  
66 plants (including plant communities, the understory, and forest floor)  
67 covering a land area which is 10,000 square feet or greater and at least 50  
68 feet wide. However, a minor [portions] portion of a forest stand which  
69 otherwise [meet this definition] qualifies may be less than 50 feet wide if  
70 [they exhibit] it exhibits the same character and composition as the overall  
71 stand. Forest includes:

- 72 (1) [areas] any area that [have] has at least 100 live trees per acre with at  
73 least [50 percent] 50% of those trees having a 2 inch or greater  
74 diameter at 4.5 feet above the ground; [and]  
75 (2) any forest [areas] area that [have] has been cut but not cleared[.]; and  
76 (3) any area where at least one layer is not present because of site  
77 conditions, pest predation, human impacts, or non-native species.

78 *Forest* does not include an orchard.

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\* \* \*

80 *Forest stand delineation* means the [evaluation] collection and presentation  
 81 of data on the existing vegetation in relation to the natural resources on a site  
 82 proposed for development or land disturbing [activities] activity.

83 \* \* \*

84 *Lot* means [for the purpose of this Chapter] a [tract] single unit of land [, the  
 85 boundaries of which have been established as a result of a] created by deed  
 86 or [previous] subdivision [of a larger parcel, and which will not be the  
 87 subject of further subdivision, as defined under Section 50-1, without an  
 88 approved forest stand delineation and forest conservation plan].

89 \* \* \*

90 Medium-density residential area means an area zoned for a density greater  
 91 than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per  
 92 40,000 square feet, including existing and planned development and  
 93 associated infrastructure, such as roads, utilities, and water and sewer  
 94 service.

95 \* \* \*

96 Natural Resource Inventory means a collection of existing, natural, and  
 97 environmental information for a property and the surrounding area.

98 *Net tract area* means the total area of a tract, including both forested and  
 99 unforested areas, to the nearest 1/10 acre, reduced by road or utility rights-  
 100 of-way which are unrelated to and will not be improved as part of the  
 101 development application. However, in any agriculture [and] or resource  
 102 [areas] area, net tract area is the portion of the total tract for which land use  
 103 will be changed or will no longer be used for primarily agricultural  
 104 activities. For a linear project, net tract area is the area of a right-of-way  
 105 width or the limits of disturbance as shown on the development application,  
 106 whichever is greater.

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*Person* means:

- (1) the federal government, the state, any county, [municipal corporation] municipality, or other political subdivision of the state, or any of their units[.];
- (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind[.]; or
- (3) any partnership, firm, common ownership community or other homeowners' association, public or private corporation, or any of their affiliates or subsidiaries[, or].
- [(4) any other entity. ]

\* \* \*

Qualified Professional means a person who meets all applicable requirements under Code of Maryland Regulations 08.19.06.01.

\* \* \*

*Retention* means the deliberate holding and protecting of existing forest and trees [and other plants] on the site.

\* \* \*

Stream buffer means a strip of land contiguous with and parallel to the bank of a perennial or intermittent stream.

Street tree means a tree either in the public right-of-way or immediately adjacent to a private street or roadway.

\* \* \*

Tree Expert means person who meets all applicable requirements of Title 5, Subtitle 4 of the Natural Resources Article of the Maryland Code.

\* \* \*

133 *Tract* means [the property subject to a development application or a  
 134 sediment control permit, as] one or more adjacent or confronting lots that are  
 135 described by deed or record plat.

136 \* \* \*

137 *Tree [save plan] inventory* means [a plan prepared in conjunction with a  
 138 development application indicating where trees are to be retained or planted,  
 139 including the establishment of conservation areas] a collection of  
 140 information that documents the health and structural condition of individual  
 141 trees and assesses their suitability for preservation relative to probable  
 142 impacts from development or construction.

143 *Tree Protection Plan* means a plan indicating where trees must be retained  
 144 or planted, including specifications for tree preservation before, during, and  
 145 after construction.

146 \* \* \*

147 **22A-4. [Applicability.] Persons Subject to the Forest Conservation Law.**

148 [Except as otherwise expressly provided in this Chapter, this Chapter applies  
 149 to:]

150 [(a) a person required by law to obtain development plan approval,  
 151 diagrammatic plan approval, project plan approval, preliminary plan  
 152 of subdivision approval, or site plan approval;]

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

157 [(c) a person who performs any cutting or clearing, or any other land  
 158 disturbing activity that would directly threaten the viability of, any  
 159 champion tree, wherever located;]

160 [(d) a government entity subject to mandatory referral on a tract of land  
161 40,000 square feet or larger which is not exempt under subsection  
162 22A-5(f);]

163 [(e) highway construction not exempt under subsections 22A-5(e) or (p);  
164 and]

165 [(f) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2),  
166 or (p).]

167 [Any person who expects to cut, clear, or grade more than 5000 square feet  
168 of forest or any champion tree, and who believes that the cutting, clearing, or  
169 grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the  
170 Planning Director in writing before performing any cutting, clearing, or grading  
171 and seek confirmation from the Director that the cutting, clearing, or grading is in  
172 fact exempt from Article II. Failing to notify the Director as required by this  
173 Section, or performing any cutting, clearing, or grading before the Director  
174 confirms that an exemption applies, is a violation of this Chapter.]

175 [The Planning Director must notify the Department of Permitting Services if  
176 this Chapter would apply to any cutting, clearing, or grading of which the  
177 Department would otherwise not be notified.]

178 (1) (a) General. Any person who meets the criteria of this  
179 Section is subject to this Chapter and must submit to either a  
180 Level 1, Level 2, or Level 3 Review.

181 (b) Level 1 Review. A person must submit to a Level 1 Review if:

182 (1) the person is required by law to obtain approval for a  
183 development plan, diagrammatic plan, project plan, preliminary  
184 plan of subdivision, or site plan;

185 (2) the person is required by law to obtain a sediment control  
186 permit or approval of a special exception on a tract of land

- 187                   which is 40,000 square feet or larger, and is not otherwise  
 188                   required to obtain an approval under subsection (b)(1);  
 189                   (3) the person proposes to perform any cutting or clearing, or any  
 190                   other land disturbing activity that would threaten the viability of  
 191                   any champion tree, wherever located;  
 192                   (4) the person is subject to mandatory referral or a park facility  
 193                   plan on a tract of land which is 40,000 square feet or larger and  
 194                   is not excluded under subsection (c) or (d);  
 195                   (5) the person proposes highway construction not excluded under  
 196                   subsection (c) or (d); or  
 197                   (6) a public or private utility proposes a cumulative limit of  
 198                   disturbance of 40,000 square feet or more for all stages of work  
 199                   in a public right-of-way or utility easement.  
 200                   (c) Level 2 Review. A person must submit to a Level 2 Review if the  
 201                   person proposes:  
 202                   (1) to build, on a single lot which is 40,000 square feet or larger, a  
 203                   house, an addition to a house, or an accessory structure (such as  
 204                   a pool, tennis court, or shed), if the activity does not result in  
 205                   cutting, clearing, or grading:  
 206                   (A) more than 40,000 square feet of forest;  
 207                   (B) any forest in an environmental buffer;  
 208                   (C) any forest on property located in a special protection area  
 209                   which must submit a water quality plan;  
 210                   (D) any specimen or champion tree; or  
 211                   (E) any tree or forest that is subject to a previously approved  
 212                   forest conservation plan or tree save plan;

- 213           (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a  
 214           lot line adjustment, conversion of an existing recorded outlot, or  
 215           joining 2 or more existing residential lots into one lot, if:
- 216           (A) the only development located on the resulting lot is a  
 217           single family dwelling unit or an accessory structure  
 218           (such as a pool, tennis court, or shed); and
- 219           (B) development does not result in cutting, clearing, or  
 220           grading:
- 221                   (i) more than 40,000 square feet of forest;  
 222                   (ii) any forest in an environmental buffer;  
 223                   (iii) any forest on property located in a special  
 224                   protection area which must submit a water quality  
 225                   plan;
- 226                   (iv) any specimen or champion tree; or  
 227                   (v) any tree or forest that is subject to the requirements  
 228                   of a previously approved forest conservation plan  
 229                   or tree save plan;
- 230           (3) a modification to existing non-residential developed property if  
 231           less than 5,000 square feet of forest will be cleared; or
- 232           (4) a State or County highway construction activity that is subject  
 233           to either Section 5-103 of the Natural Resources Article of the  
 234           Maryland Code or Level 1 Review.
- 235           (d) Level 3 Review. A person must submit to a Level 3 Review if the  
 236           person:
- 237                   (1) proposes an agricultural activity that is exempt from:
- 238                   (A) platting requirements under Section 50-9; and

239 (B) a requirement to obtain a sediment control permit under  
 240 Section 19-2(c)(2).

241 An agricultural support building and related activity is excluded  
 242 only if it is built and conducted using best management  
 243 practices as defined by the Natural Resources Conservation  
 244 Service;

245 (2) proposes a tree nursery;

246 (3) applies for a special exception for an existing structure and the  
 247 proposed use will not result in clearing existing forest or trees;

248 (4) proposes a commercial logging and timber harvesting  
 249 operation, including any harvesting conducted under the forest  
 250 conservation and management program under Section 8-211 of  
 251 the Tax-Property Article of the Maryland Code that has  
 252 received:

253 (A) approval from the County Arborist or the Arborist's  
 254 designee that the logging or timber harvesting plan is not  
 255 inconsistent with County forest management objectives  
 256 and is otherwise appropriate; and

257 (B) a sediment control permit from the Department of  
 258 Permitting Services and posted the required financial  
 259 security under Chapter 19. A person who qualifies under  
 260 this subsection must provide a copy of each sediment  
 261 control permit issued for commercial logging and timber  
 262 harvesting operations to the Planning Director.

263 (5) proposes a government project reviewed for forest conservation  
 264 purposes by the State Department of Natural Resources under  
 265 state law;

- 266 (6) conducts routine maintenance of public utility easements and  
 267 rights-of-way, and routine maintenance of stormwater  
 268 management facilities that are not subject to an existing  
 269 conservation easement, except for clearing access roads;  
 270 (7) conducts utility or other work required in an emergency;  
 271 (8) conducts noncoal surface mining regulated under Title 7 of the  
 272 Natural Resources Article of the Maryland Code; or  
 273 (9) cuts or clears a public utility right-of-way or land for an electric  
 274 generating station licensed under state law if a certificate of  
 275 public convenience and necessity was issued under Section 5-  
 276 1603(f) of the Natural Resources Article of the Maryland Code.

277 22A-5. [Exemptions] **Reserved.**

278 [The requirements of Article II do not apply to:]

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

- 283 (1) does not require a special exception;  
 284 (2) does not result in the cutting, clearing, or grading of:  
 285 (A) more than a total of 40,000 square feet of forest;  
 286 (B) any forest in a stream buffer,  
 287 (C) any forest on property located in a special protection area  
 288 which must submit a water quality plan,  
 289 (D) any specimen or champion tree, or  
 290 (E) any trees or forest that are subject to a previously  
 291 approved forest conservation plan or tree save plan; and

- 292 (3) is subject to a declaration of intent filed with the Planning  
293 Director stating that the lot will not be the subject of additional  
294 regulated activities under this Chapter within 5 years of the  
295 cutting, clearing, or grading of forest;]
- 296 [(b) an agricultural activity that is exempt from both platting requirements  
297 under Section 50-9 and requirements to obtain a sediment control  
298 permit under Section 19-2(c)(2). Agricultural support buildings and  
299 related activities are exempt only if built using best management  
300 practices;]
- 301 [(c) a tree nursery;]
- 302 [(d) (1) a commercial logging and timber harvesting operation,  
303 including any harvesting conducted under the forest  
304 conservation and management program under Section 8-211 of  
305 the Tax-Property Article of the Maryland Code that:
- 306 (A) is completed before July 1, 1991, or is completed on or  
307 after July 1, 1991, and the property on which the cutting  
308 or clearing is conducted is not the subject of an  
309 application for development within 5 years after the  
310 sediment control permit has been issued;
- 311 (B) has received approval from the County Arborist or  
312 designee that the logging or timber harvesting plan is not  
313 inconsistent with County forest management objectives  
314 and is otherwise appropriate; and
- 315 (C) has received a sediment control permit from the  
316 Department of Permitting Services and posted the  
317 required financial security under Chapter 19.

- 318 (2) The Department of Permitting Services must send the Planning  
319 Director a copy of all sediment control permits issued for  
320 commercial logging and timber harvesting operations.
- 321 (3) The requirements of this subsection apply to commercial  
322 logging and timber harvesting operations on agricultural land;]
- 323 [(e) a State or County highway construction activity that is subject to  
324 Section 5-103 of the Natural Resources Article of the Maryland Code,  
325 or Section 22A-9;]
- 326 [(f) a governmental project reviewed for forest conservation purposes by  
327 the State Department of Natural Resources under the Code of  
328 Maryland Regulations;]
- 329 [(g) except for the clearing of access roads, routine maintenance of public  
330 utility easements and rights-of-way;]
- 331 [(h) utility or other work that is of an emergency nature;]
- 332 [(i) noncoal surface mining regulated under Title 7 of the Natural  
333 Resources Article of the Maryland Code;]
- 334 [(j) a sediment control permit approved before July 1, 1991, or if amended  
335 after that date at the initiation of the permittee, that does not result in  
336 the cutting of more than 5,000 additional square feet of forest;]
- 337 [(k) any lot covered by a preliminary plan of subdivision or site plan that  
338 did not receive a sediment control permit before July 1, 1991, and for  
339 which the preliminary plan of subdivision or site plan:
- 340 (1) was approved before July 1, 1984, and has less than 40,000  
341 square feet of forest cover; or
- 342 (2) was approved or extended between July 1, 1984 and July 1,  
343 1991, and

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

346 (A) any forest in a stream buffer, or

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

349 A preliminary plan of subdivision or site plan approved before July 1,  
350 1991, that is revised after that date at the initiative of the applicant and  
351 which results in the cutting of more than 5,000 additional square feet  
352 of forest is not exempt. Development or redevelopment of a property  
353 which requires resubdivision is not exempt. This subsection does not  
354 apply to a planned unit development subject to subsection (1);]

355 [(l) any planned unit development for which a development plan was  
356 approved by the District Council or for which a project plan was  
357 approved by the Planning Board before January 1, 1992, and which  
358 has received site plan approval before July 1, 1992 for the tract.  
359 However, even if site plan approval has not been obtained before July  
360 1, 1992, for the tract, the planned unit development is exempt if it is  
361 75% or more complete on January 1, 1992, as measured by the total  
362 acreage subject to the planned unit development that has received site  
363 plan approval. A development plan or project plan amendment  
364 approved after January 1, 1992, is not exempt if it results in the  
365 cutting of more than 5,000 additional square feet of forest;]

366 [(m) a real estate transfer to provide a security, leasehold, or other legal or  
367 equitable interest in a portion of a lot or parcel, if;

368 (1) the transfer does not involve a change in land use, or new  
369 development or redevelopment, with associated land disturbing  
370 activities; and

- 371 (2) both the grantor and grantee file a declaration of intent;]
- 372 [(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving
- 373 conversion of an existing recorded outlot created because of
- 374 inadequate or unavailable sewerage or water service to a lot or joining
- 375 two or more existing residential lots into one lot, if:
- 376 (1) the only development located on the resulting lot is a single
- 377 family dwelling unit or an accessory structure (such as a pool,
- 378 tennis court, or shed); and
- 379 (2) development does not result in the cutting, clearing, or grading
- 380 of:
- 381 (A) more than a total of 40,000 square feet of forest,
- 382 (B) any forest in a stream buffer,
- 383 (C) any forest on property located in a special protection area
- 384 which must submit a water quality plan,
- 385 (D) any specimen or champion tree, or
- 386 (E) any tree or forest that is subject to the requirements of a
- 387 previously approved forest conservation plan or tree save
- 388 plan;]
- 389 [(o) The cutting or clearing of public utility rights-of-way or land for
- 390 electric generating stations licensed under Section 54A and 54B or
- 391 Section 54I of Article 78 of the Maryland Code, if:
- 392 (1) any required certificates of public convenience and necessity
- 393 have been issued in accordance with Section 5-1604(f) of the
- 394 Natural Resources Article of the Maryland Code; and
- 395 (2) the cutting or clearing of the forest is conducted so as to
- 396 minimize the loss of forest.]

- 397 [(p) the construction of a public utility or highway in a utility right-of-way  
398 not exempt under subsection (o), or a highway right-of-way not  
399 exempt under subsection (e), if:
- 400 (1) the right-of-way existed before July 1, 1992;
  - 401 (2) forest clearing will not exceed a total of 40,000 square feet and
  - 402 (3) the construction will not result in the cutting, clearing, or  
403 grading of:
    - 404 (A) any forest in a stream buffer,
    - 405 (B) any forest on property located in a special protection area  
406 which must submit a water quality plan,
    - 407 (C) any specimen or champion tree, or
    - 408 (D) any tree or forest that is subject to a previously approved  
409 forest conservation or tree save plan;]
- 410 [(q) a special exception application if:
- 411 (1) the application is for an existing structure and the proposed use  
412 will not result in clearing of existing forest or trees;
  - 413 (2) the application modifies an existing special exception use  
414 which was approved before July 1, 1991, and the revision will  
415 not result in the clearing of more than a total of 5000 additional  
416 square feet of forest or any specimen or champion tree; or
  - 417 (3) the total disturbance area for the proposed special exception use  
418 will not exceed 10,000 square feet, and clearing will not exceed  
419 a total of 5000 square feet of forest or include any specimen or  
420 champion tree;]
- 421 [(r) an equestrian facility located in an agricultural zone that is exempt  
422 from platting requirements under Section 50-9, whether or not a  
423 sediment control permit is obtained under Section 19-2. Article II

424 does not apply to any equestrian support building or related activity  
 425 only if the building is built using best management practices.  
 426 However, Section 22A-6(b) applies if any specimen or champion tree  
 427 would be cleared. This exemption does not permit any forest or tree  
 428 that was preserved under a previously-approved forest conservation  
 429 plan or tree save plan to be cut, cleared, or graded unless the  
 430 previously-approved plan is amended to allow that activity. This  
 431 exemption does not apply if:

- 432 (1) any forest was cleared during an agricultural activity, as defined  
 433 in subsection (b), during the 5 years before any exemption  
 434 under this subsection is claimed;
- 435 (2) any forest or tree located in a stream valley buffer would be  
 436 cleared;
- 437 (3) on-site forest retention does not equal at least 25% of the tract  
 438 area or all forest existing when the exemption is claimed,  
 439 whichever is less; or
- 440 (4) on-site forest retention does not equal at least 50% of any net  
 441 tract area when more than 50% of that tract is existing forest.

442 A conservation easement is not required for any equestrian facility,  
 443 whether or not the exemption in this subsection applies. However,  
 444 another type of long-term protection may be required under Section  
 445 22A-12(h)(2) if the facility includes any forest retention area. The  
 446 Planning Director must monitor any facility that is exempt under this  
 447 subsection to confirm that the applicant and any successor in interest  
 448 continue to comply with all conditions of the exemption;]

- 449 [(s) (1) an activity occurring on a tract of land less than 1.5 acres with  
 450 no existing forest, or existing specimen or champion tree, and

- 451 the afforestation requirements would not exceed 10,000 square  
 452 feet; or
- 453 (2) an activity occurring on a tract less than 1 acre that will not  
 454 result in the clearing of more than a total of 30,000 square feet  
 455 of existing forest, or any existing specimen or champion tree,  
 456 and reforestation requirements would not exceed 10,000 square  
 457 feet. Forest in any priority area on-site must be preserved; and]
- 458 [(t) a modification to existing developed property if:
- 459 (1) no more than 5000 square feet of forest will be cleared;
- 460 (2) the modification does not affect any forest in a stream buffer or  
 461 located on property in a special protection area which must  
 462 submit a water quality plan; and
- 463 (3) the modification does not require approval of a new subdivision  
 464 plan.]

465 **22A-6. [Exemptions-Special provisions] Reserved.**

- 466 [(a) Special transition provision. An activity or development that is  
 467 exempted under Section 22A-5, but which requires site plan approval,  
 468 is subject to the local law applicable to tree conservation in effect  
 469 before July 1, 1992. However, a violation of the requirements of any  
 470 tree save plan or similar condition of approval may be enforced using  
 471 any remedy provided under this Chapter.]
- 472 [(b) Tree save plan provision. An activity or development that would be  
 473 exempt under Section 22A-5, except that the proposed activity  
 474 involves clearing of a specimen or champion tree, requires the  
 475 approval of a tree save plan, which may require tree preservation or  
 476 mitigation for loss of individual trees. The plan requirements must be  
 477 based on the size and character of the trees to be cleared. If trees to be

478 cleared are part of an existing scenic buffer between public parkland  
 479 and a proposed development, trees which are smaller than specimen  
 480 size may be included in the plan.]

481 **22A-7. [Activities or development not exempt under Section 22A-5 --**  
 482 **Special transition provision] Reserved.**

483 [(a) An activity or development not exempted under Section 22A-5 and  
 484 which received preliminary plan of subdivision approval, site plan  
 485 approval, project plan approval, or development plan approval,  
 486 including any amendments, between July 1, 1991 and July 1, 1992 is  
 487 exempt from the requirements of Article II at the time of a subsequent  
 488 sediment control permit application if:

489 (1) final plat approval has been obtained by July 1, 1992; or  
 490 (2) a substantively complete application for final plat approval  
 491 under Section 50-36 has been filed by July 1, 1992. If all other  
 492 requirements are met, the Planning Board must consider an  
 493 application to be substantively complete if the Board  
 494 determines that:

495 (A) any required approval or permit that has not been  
 496 obtained from another governmental agency is not  
 497 available solely because of the inaction by the other  
 498 governmental agency; and

499 (B) the applicant has used best efforts to obtain the permit or  
 500 approval.]

501 [(b) If final plat approval will not be required under subsection (a) of this  
 502 Section because the development is on a recorded lot or for other  
 503 reasons, the development will be subject to the requirements of this

504 Chapter at the time of any subsequent application for a sediment  
505 control permit.]

506 [(c) If the Planning Board finds that a development approval between July  
507 1, 1991 and July 1, 1992 was consistent with the retention,  
508 afforestation, or reforestation standards of this Chapter but is not  
509 exempt under this Section, the Board may waive additional  
510 submission requirements at the time of any later sediment control  
511 permit application. However, the Board must not waive the provisions  
512 of Section 22A-12(g) and (h) requiring certain agreements and  
513 financial security.]

514 [(d) An amendment to a sediment control permit approved between July 1,  
515 1991 and July 1, 1992 is subject to the requirements of Article II if the  
516 activity is not otherwise exempt and it will result in the cutting of an  
517 additional 5,000 square feet of forest.]

518 **22A-8. [Utility lines] Reserved.**

519 [(a) General.

520 (1) Except as provided in paragraph (2) of this subsection, this  
521 Section applies to a proposed land disturbing activity requiring  
522 a sediment control permit for the construction, reconstruction,  
523 or replacement of public utility lines (except water and sewer  
524 lines) within a public right-of-way, public utility easement, or a  
525 public utility right-of-way owned by the utility.

526 (2) This Section does not apply if a public utility easement will be  
527 located on the property of a development subject to Article II of  
528 this Chapter. Satisfaction of the regulatory requirements of that  
529 Article applicable to activities on the easement is the  
530 responsibility of the owner of the property.]

## 531 [(b) Calculation Rules; Exemption.

532 (1) To determine the applicability of this Chapter under Section  
533 22A-4 to proposed activities within a public right-of-way or  
534 public utility easement, the calculation of land area must be  
535 based on the limits of disturbance as shown on the sediment  
536 control permit.

537 (2) A public right-of-way, public utility easement, or privately  
538 owned utility right-of-way is considered to be exempt under  
539 Section 22A-5(o) if the proposed activity and any future stages  
540 of the work on the utility line will not result in the cumulative  
541 cutting, clearing, or grading of more than 40,000 square feet of  
542 forest or the cutting, clearing, or grading of any specimen or  
543 champion tree, or trees or forest that are subject to a previously  
544 approved forest conservation or tree save plan. Any later stages  
545 of the work must be identified at the time of the initial sediment  
546 control permit application.

547 (3) If the exemption does not apply, afforestation or reforestation  
548 requirements must be calculated using the net tract area  
549 applicable to the entire proposed utility line without regard to  
550 project segments subject to a specific sediment control permit.  
551 The property boundaries of the privately owned utility right-of-  
552 way, public utility easement, or public right-of-way (to the  
553 extent of the utility work) must be used in calculating the area  
554 of the tract. The net tract area should reflect any reduction in  
555 land area that will continue to be used for agricultural  
556 activities.]

557 [Any requirement for mitigation for loss of any specimen or champion tree  
 558 must be based on the size and character of the tree.]

559 **22A-9. County Highway Projects.**

560 (a) General.

561 (1) This [section] Section applies to construction of a highway by  
 562 the County as part of an approved Capital Improvements  
 563 Program project.

564 \* \* \*

565 (c) Reforestation for County highway projects must meet the standards in  
 566 subsections [22A-12(e), (g) and (h)] 22A-12(c), (f), and (g).

567 \* \* \*

568 **Article [II] 2. Natural Resource Inventory/Forest Stand Delineations, [and]**  
 569 **Forest Conservation Plans, Tree Inventories, and Tree Protection Plans.**

570 **22A-10. [General] Approvals required.**

571 (a) [*Approval*] Level 1 approval required. A person who is subject to  
 572 [this Article] Level 1 review must submit to the Planning Director a  
 573 [forest stand delineation and forest conservation plan] Natural  
 574 Resource Inventory/Forest Stand Delineation and Forest Conservation  
 575 Plan [for regulatory approval].

576 [(b) Forest Stand Delineation]

577 (1) Natural Resource Inventory/Forest Stand Delineation.

578 (A) A [forest stand delineation] Natural Resource  
 579 Inventory/Forest Stand Delineation must be [used during  
 580 the preliminary review process to find the most suitable  
 581 and practical areas for tree and forest conservation]  
 582 signed by a qualified professional. A [forest stand

583 delineation] Natural Resource Inventory/Forest Stand  
 584 Delineation must contain:

- 585 (i) topographic, hydrographic, soils, and geologic  
 586 information [, and];  
 587 (ii) qualitative and quantitative information on trees  
 588 and forest cover[,]; and  
 589 (iii) other information or requirements specified [in the  
 590 regulations] by regulation or in the technical  
 591 manual.

592 [(2) A simplified forest stand delineation may replace the forest  
 593 stand delineation required by paragraph (1) if:

- 594 (A) there is no forest on the site;  
 595 (B) no forest on the site would be cut, cleared, or graded for  
 596 the proposed use, and all forest on the site would be  
 597 subject to a long-term protective agreement; or  
 598 (C) the on-site forest is located on a portion of the tract which  
 599 is exempt from this Article, such as areas remaining in  
 600 agricultural use as part of a subdivision.]

601 [(3)] (B) The Planning Director may waive any requirement for  
 602 information that is unnecessary for a specific site.

603 [(4)] (C) An approved [forest stand delineation] Natural  
 604 Resource Inventory/Forest Stand Delineation is not valid  
 605 after 2 years unless[:] a qualified professional recertifies  
 606 the natural resource inventory/forest stand delineation, or  
 607 [(A)] a [forest conservation plan] Forest Conservation  
 608 Plan [has been] is accepted as complete[: or].

609 [(B) the delineation has been recertified by the  
610 preparer.]

611 [(c)] (2) *Forest [conservation plan] Conservation Plan.*

612 [(1)] (A) [A forest conservation plan is intended to govern  
613 conservation, maintenance, and any afforestation or  
614 reforestation requirements which apply to the site.] A  
615 [forest conservation plan] Forest Conservation Plan must  
616 be signed by a qualified professional and must contain  
617 information on the extent and characteristics of:

618 (i) the trees and forested area to be retained or  
619 planted[.];

620 (ii) proposed locations for on-site and off-site  
621 reforestation[.];

622 (iii) scheduling[.];

623 (iv) protective measures[.];

624 (v) a binding maintenance agreement effective for at  
625 least [2] 5 years[.];

626 (vi) a binding agreement to protect forest conservation  
627 areas, and other information or requirements  
628 specified [in the] by [regulations] regulation or  
629 technical manual.

630 [(2)] (B) A [forest conservation plan may] Forest Conservation  
631 Plan must include protective measures designed to  
632 conserve [significant and mature trees on adjacent  
633 property] trees on the subject tract, or on adjacent  
634 properties, from adverse impacts that may be caused by

635 the development or land disturbing activities proposed  
636 for the tract.

637 [(3)] (C) A [forest conservation plan] Forest Conservation Plan  
638 may be reviewed in 2 stages with the submission of a  
639 preliminary and a final [forest conservation plan] Forest  
640 Conservation Plan as specified under Section 22A-11.

641 [(d) *Qualifications of preparer.* The forest stand delineation and forest  
642 conservation plan must be prepared by a licensed forester, licensed  
643 landscape architect or other qualified professional approved by the  
644 Planning Director. In determining if a person is qualified, the person  
645 must meet all applicable requirements under the Code of Maryland  
646 Regulations, 08.19.06.01.]

647 (b) Level 2 approval required. A person who is subject to Level 2 must  
648 submit to the Planning Director a Tree Inventory, Tree Protection  
649 Plan, and a Declaration of Intent.

650 (1) Tree Inventory.

651 (A) A Tree Inventory must be signed by a certified arborist or  
652 a tree expert, and must:

653 (i) assess, identify, and characterize the tree species;

654 (ii) estimate the height, age, and canopy of each tree;

655 (iii) document the diameter of each tree; and

656 (iv) provide any other information or requirement  
657 specified by regulation or in the technical manual.

658 (B) The Planning Director may waive any requirement for  
659 information that is unnecessary for a specific site.

660 (C) An approved Tree Inventory is not valid after 2 years  
 661 unless a certified arborist or a tree expert recertifies the  
 662 Tree Inventory or a Tree Protection Plan is approved.

663 (2) Tree Protection Plan

664 (A) A Tree Protection Plan must be signed by a certified  
 665 arborist and used to protect trees during construction. A  
 666 Tree Protection Plan must identify:

667 (i) each tree to be retained and removed;

668 (ii) the proposed limit of disturbance; existing and  
 669 proposed utility connections;

670 (iii) detailed drawings and measures to protect trees;  
 671 and

672 (iv) any other information or requirement specified by  
 673 regulation or in the trees technical manual.

674 (B) A Tree Protection Plan must include measures to protect  
 675 trees on adjacent property from adverse impacts caused  
 676 by the proposed development or land disturbing activity.

677 (3) Declaration of Intent.

678 (A) A Declaration of Intent must verify that the proposed  
 679 activity does not require a Level 1 Review.

680 (B) Regulated activity must not occur on the area covered by  
 681 the Declaration of Intent within 7 years after cutting,  
 682 clearing, or grading any forest or tree resource is  
 683 complete.

684 (C) The Planning Board may require a person who does not  
 685 file or comply with a Declaration of Intent to:

686 (i) submit to a Level 1 review; and

687 (ii) pay a penalty fee established by fee schedules  
 688 approved by Council resolution per square foot of  
 689 forest cut or cleared, not less than the minimum set  
 690 by state law.

691 (c) Level 3 approval required.

692 (1) A person who is subject to Level 3 must submit to the Planning  
 693 Director a Declaration of Intent.

694 (2) Declaration of Intent.

695 (A) A Declaration of Intent must verify that the proposed  
 696 activity does not require a Level 1 or Level 2 Review.

697 (B) Regulated activity must not occur on the area covered by  
 698 the Declaration of Intent within 7 years after cutting,  
 699 clearing, or grading forest resources is complete.

700 (C) The Planning Board may require a person who does not  
 701 file or comply with a Declaration of Intent to:

702 (i) submit to a Level 1 review; and

703 (ii) pay a penalty fee established by fee schedules  
 704 approved by Council resolution per square foot of  
 705 forest cut or cleared, not less than the minimum set  
 706 by state law;

707 **22A-11. [Application, review, and approval] Review Procedures.**

708 (a) [General] Level 1 Review.

709 (1) Natural Resource Inventory/Forest Stand Delineation. A  
 710 person subject to a Level 1 review must submit to the Planning  
 711 Director a Natural Resource Inventory/Forest Stand  
 712 Delineation. Within 30 days after receiving the Natural  
 713 Resource Inventory/Forest Stand Delineation, the Director must

714 notify the person whether the Natural Resource  
715 Inventory/Forest Stand Delineation is complete. An incomplete  
716 application must be denied. If the Director does not act on the  
717 submission within 30 days, the delineation must be treated as  
718 approved. The Director may extend the deadline for an  
719 additional 15 days in extenuating circumstances.

720 (2) Preliminary Forest Conservation Plan. After a person is  
721 notified that the Natural Resource Inventory/Forest Stand  
722 Delineation is approved, a person must submit a preliminary  
723 forest conservation plan to the Planning Board or Planning  
724 Director. The preliminary Forest Conservation Plan must be  
725 reviewed with any application of which it is a necessary  
726 component.

727 (3) Final Forest Conservation Plan.

728 (A) After the preliminary Forest Conservation Plan is  
729 approved, a person must submit a final Forest  
730 Conservation Plan concurrently with a site plan, record  
731 plat, or sediment control plan, as applicable. The Plan  
732 must be reviewed with the applicable site plan, record  
733 plat, or sediment control plan.

734 (B) Within 45 days after receiving the final Forest  
735 Conservation Plan, the Planning Director must notify the  
736 applicant whether the Plan is complete and approved. If  
737 the applicant is not notified within 45 days, the Plan must  
738 be treated as approved. The Director may extend the  
739 deadline for an additional 15 days in extenuating  
740 circumstances.

741 (4) Coordination and Special Provisions.

742 [(1)] (A) Coordinated with project review. [The forest stand  
 743 delineation and forest conservation plan must be  
 744 submitted and reviewed in conjunction with the review  
 745 process for a development plan, project plan, preliminary  
 746 plan of subdivision, site plan, special exception,  
 747 mandatory referral, or sediment control permit in  
 748 accordance with this Section.] The Planning Director  
 749 must coordinate review of the forest conservation plan  
 750 with the Director of Environmental Protection, the  
 751 Director of Permitting Services, the Washington  
 752 Suburban Sanitary Commission, any other relevant  
 753 regulatory [agencies] agency, and [entities that will  
 754 provide] any public [utilities to] utility that will serve the  
 755 tract, to promote consistency between the objectives of  
 756 this Chapter and other development requirements. To the  
 757 extent practicable, [entities providing] public utilities  
 758 should design facilities that will serve a tract in a manner  
 759 that avoids identified conservation areas and minimizes  
 760 tree loss.

761 (B) Special exceptions. If a special exception application is  
 762 subject to this Chapter, the applicant must submit a Level  
 763 1, Level 2, or Level 3 review to the Planning Director  
 764 before the Board of Appeals may consider the application  
 765 for the special exception. The Board of Appeals must  
 766 review the preliminary forest conservation plan along  
 767 with the special exception application and must not

768 approve a special exception that conflicts with the  
 769 preliminary forest conservation plan. A final forest  
 770 conservation plan must be submitted before an applicant  
 771 obtains a sediment control permit, or when a preliminary  
 772 plan of subdivision or site plan application is filed, if  
 773 required.

774 (C) Sediment control permit. If an application for a sediment  
 775 control permit is subject to this Chapter, the applicable  
 776 permit issuing authority must direct the applicant to the  
 777 Planning Director for a determination. If the Planning  
 778 Director finds that the sediment control permit is subject  
 779 to this Chapter, the applicant must submit to the  
 780 applicable level of review. The sediment control permit  
 781 issuing authority must not approve a sediment control  
 782 permit that conflicts with an approved forest conservation  
 783 plan.

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

788 [(A)] (i) field inspections or other evaluation reveals  
 789 minor inadequacies of the plan and the  
 790 modification of the plan in order to remedy such  
 791 inadequacies will not negatively affect the final  
 792 approved plan; or

793 [(B)] (ii) each modification is minor and does not impact  
 794 any forest in a priority area (such as substituting an

795 on-site conservation area for an equal or greater  
 796 on-site area of similar character, or substituting a  
 797 marginal on-site conservation area for equal or  
 798 greater amount of off-site priority area); or  
 799 [(C)] (iii) action is otherwise required in an emergency  
 800 situation.

801 Any other modification must be approved by [the agency  
 802 that] either the Planning Board or the Planning Director,  
 803 whichever approved the [forest conservation plan] Forest  
 804 Conservation Plan.

805 [(b) Project requiring development plan, project plan, preliminary plan of  
 806 subdivision, or site plan approval.

807 (1) Forest stand delineation. The applicant must submit to the  
 808 Planning Director a forest stand delineation with the application  
 809 for a development plan, project plan, preliminary plan of  
 810 subdivision, or site plan, whichever comes first. Within 30 days  
 811 of receipt, the Planning Director must notify the applicant  
 812 whether the forest stand delineation is complete and correct. If  
 813 the Planning Director fails to notify the applicant within 30  
 814 days, the delineation will be treated as complete and correct.  
 815 The Planning Director may require further information or  
 816 provide for one extension of this deadline for an additional 15  
 817 days for extenuating circumstances.

818 (2) Forest conservation plan.

819 (A) Application. Upon notification that the forest stand  
 820 delineation is complete and correct, the applicant must  
 821 submit a forest conservation plan to the Planning

822 Director. If the development proposal will require more  
823 than one of the approvals subject to this subsection, the  
824 applicant must submit a preliminary forest conservation  
825 plan to the Planning Director in conjunction with the first  
826 approval and a final forest conservation plan in  
827 conjunction with the last approval. If only one approval  
828 subject to this subsection is required, an applicant, with  
829 the approval of the Planning Board, may submit a  
830 preliminary forest conservation plan at the time of the  
831 development approval and a final forest conservation  
832 plan before issuance of a sediment control permit for the  
833 tract.

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

847 (C) Condition of approval. The forest conservation plan will  
848 be reviewed by the Planning Board concurrently with the

849 development plan, project plan, preliminary plan of  
850 subdivision or site plan, as appropriate. The forest  
851 conservation plan, as may be amended by the Board,  
852 must be made a condition of any approval of the  
853 development application. For a development plan, a  
854 Planning Board recommendation to the District Council  
855 on the preliminary forest conservation plan must be made  
856 under Section 59-D-1.4.]

857 [(c) Project requiring special exception approval.

- 858 (1) Forest stand delineation. If a special exception proposal is  
859 subject to the requirements of this Chapter, the applicant must  
860 submit a forest stand delineation to the Planning Director before  
861 the Board of Appeals may consider the application for the  
862 special exception. The deadlines for reviewing a forest stand  
863 delineation are the same as in paragraph (b)(1) of this Section.
- 864 (2) Forest conservation plan. Upon notification that the forest stand  
865 delineation is complete and correct, the applicant must submit a  
866 preliminary forest conservation plan to the Planning Director.  
867 The Board of Appeals must consider the preliminary forest  
868 conservation plan when approving the special exception  
869 application and must not approve a special exception  
870 application that is in conflict with the preliminary forest  
871 conservation plan. A final forest conservation plan must be  
872 submitted before obtaining a sediment control permit, or at the  
873 time of preliminary plan of subdivision or site plan application,  
874 if required. The deadlines for reviewing a final forest

875 conservation plan are the same as in paragraph (d)(2) of this  
876 Section.]

877 [(d) Project requiring a sediment control permit only.

878 (1) Forest Stand Delineation. If an application for a sediment  
879 control permit may be subject to the requirements of this  
880 Chapter, the applicable sediment control permit issuing  
881 authority must direct the applicant to the Planning Director for  
882 a determination. If the Planning Director finds the sediment  
883 control permit application to be subject to this Chapter, the  
884 applicant must submit a forest stand delineation to the Planning  
885 Director for review. The deadlines for reviewing a forest stand  
886 delineation are the same as in paragraph (b)(1) of this Section.

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

899 (3) Issuance of sediment control permit. A sediment control permit  
900 must not be issued to a person who must comply with this  
901 Article until:

902 (A) a final forest conservation plan, if required, is approved;  
 903 and

904 (B) any financial security instrument required under this  
 905 Chapter is provided.]

906 [(e) Project requiring mandatory referral.

907 (1) Forest stand delineation. A person seeking mandatory referral  
 908 for a project that is subject to the requirements of this Chapter  
 909 must first submit a forest stand delineation to the Planning  
 910 Director for review. The deadlines for reviewing a forest stand  
 911 delineation are the same as in paragraph (b)(1) of this Section.

912 (2) Forest conservation plan. Upon notification that the forest stand  
 913 delineation is complete and correct, the applicant must submit  
 914 to the Planning Director a preliminary forest conservation plan.  
 915 The Planning Board must consider the preliminary forest  
 916 conservation plan when reviewing the mandatory referral  
 917 application. The deadlines for reviewing the final forest  
 918 conservation plan are the same as in paragraph (d)(2) of this  
 919 Section.

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

923 (b) Level 2 Review. A person subject to a Level 2 review must submit to  
 924 the Planning Director the Tree Inventory with a Declaration of Intent.  
 925 Within 30 days after receiving the Tree Inventory and Declaration of  
 926 Intent, the Planning Director must notify the person whether the Tree  
 927 Inventory is complete. An incomplete application must be denied. If  
 928 the Planning Director fails to act on the submission within 30 days,

929 the Tree Inventory will be treated as approved. The Planning Director  
 930 may extend the deadline for an additional 15 days for extenuating  
 931 circumstances.

932 (c) Level 3 Review. A person subject to a Level 3 review must submit to  
 933 the Planning Director a Declaration of Intent. Within 30 days After  
 934 receiving the Declaration of Intent, the Planning Director must notify  
 935 the person whether the Declaration of Intent is complete. An  
 936 incomplete application must be denied. If the Planning Director fails  
 937 to act on the submission within 30 days, the Declaration of Intent will  
 938 be treated as approved. The Planning Director may extend the  
 939 deadline for an additional 15 days for extenuating circumstances.

940 **22A-12. Retention, afforestation, and reforestation requirements for Level**  
 941 **1 Review.**

942 (a) [Table.] General. The Forest Conservation Plan must, to the  
 943 maximum extent feasible, retain certain vegetation and specific areas  
 944 in an undisturbed condition, unless the Planning Board or the  
 945 Planning Director finds retention is not feasible without undesirable  
 946 alterations to the proposal. The Forest Conservation Plan must  
 947 mitigate for the loss of forest and trees in the following order of  
 948 preference:

- 949 (1) on site reforestation or afforestation;  
 950 (2) offsite forest planting within the same watershed;  
 951 (3) on site non-native and invasive management control with  
 952 supplemental planting;  
 953 (4) forest mitigation banks;  
 954 (5) in-lieu fee; and  
 955 (6) on site landscaping with an approved plan.

956 (b) How to Calculate the Requirements.

957 (1) Table.

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews</i>		
<i>Land Use [Category] Type<sup>[1]</sup></i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] <u>25%</u>
Institutional Development Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% <sup>2</sup> ], <u>20-25%<sup>1</sup></u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% <sup>2</sup> ], <u>20-25%<sup>1</sup></u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

958 The residential and institutional portions of the tract must meet the [20%] 25%  
 959 requirement. All other uses must meet the 20% requirements. [If a planned unit  
 960 development was initially approved before January 1, 1992, and is between  
 961 25% and 75% complete on July 1, 1992, (as measured by the total acreage  
 962 subject to the planned unit development that has received site plan approval),  
 963 the forest conservation threshold is calculated at 15 per cent. If the planned unit  
 964 development is less than 25% complete, the forest conservation threshold is  
 965 calculated using the adjustment shown in the chart.]

966 [(b) *Retention.*

967 (1) The primary objective of the forest conservation plan should be  
 968 to retain existing forest and trees and avoid reforestation in  
 969 accordance with this Chapter. The forest conservation plan

970 must retain certain vegetation and specific areas in an  
 971 undisturbed condition unless the Planning Director finds that:

972 (A) the development would make maximum use of any  
 973 available planning and zoning options that would result  
 974 in the greatest possible forest retention;

975 (B) reasonable efforts have been made to protect the specific  
 976 areas and vegetation listed in the plan; and

977 (C) the development proposal cannot be reasonably altered.

978 (2) In general, areas protected under this subsection include:

979 (A) floodplains, stream buffers, steep slopes, and critical  
 980 habitats;

981 (B) contiguous forests;

982 (C) rare, threatened, and endangered species;

983 (D) trees connected to an historic site;

984 (E) champion trees and other exceptionally large trees; and

985 (F) areas designated as priority save areas in a master plan or  
 986 functional plan.]

987 [(c)] (2) *Reforestation*. The forest conservation plan must provide for  
 988 reforestation as follows:

989 [(1)] (A) For all existing forest cover measured to the nearest  
 990 1/10 acre cleared on the net tract area below the  
 991 applicable forest conservation threshold, the area of  
 992 forest removed must be reforested at a ratio of 2 acres  
 993 planted for every one acre removed.

994 [(2)] (B) For all existing forest cover measured to the nearest  
 995 1/10 acre cleared on the net tract area above the  
 996 applicable forest conservation threshold, the area of

997 forest removed must be reforested at a ratio of  $\frac{1}{4}$  acre  
 998 planted for every one acre removed.

999 [(3)] (C) Each acre of forest retained on the net tract area above  
 1000 the applicable forest conservation threshold must be  
 1001 credited against the total number of acres required to be  
 1002 reforested.

1003 [(4)] (D) A regulated activity under this Chapter within the net  
 1004 tract area that occurs wholly or partly in areas regulated  
 1005 as nontidal wetlands is subject to both the nontidal  
 1006 wetland regulatory requirements and the requirements of  
 1007 this Chapter. However, any area of forest within the net  
 1008 tract area that is retained, including forest in nontidal  
 1009 wetlands, must be counted towards forest conservation  
 1010 requirements under this Chapter.

1011 [(d)] (3) *Afforestation.*

1012 [(1)] (A) A site with less than 20 percent of the net tract area in  
 1013 forest cover must be afforested in accordance with the  
 1014 required afforestation percentages shown on the table in  
 1015 subsection [(a)] (b)(1) of this Section.

1016 [(2)] (B) Afforestation [should] must be accomplished by the  
 1017 planting, maintenance, and establishment of forest  
 1018 cover[. However, if the applicant] unless a person  
 1019 demonstrates to the satisfaction of the Planning Board or  
 1020 Planning Director, as the case may be[, that afforestation  
 1021 using forest cover is inappropriate]. Afforestation may  
 1022 be satisfied by tree cover for a site because of its location  
 1023 in an urban setting, redevelopment context, high-density

1024 residential, commercial, industrial, planned unit  
 1025 development, or institutional area (as defined in Section  
 1026 22A-3), or similar reason, afforestation requirements may  
 1027 be satisfied by tree cover.

1028 [(e)] (c) *Standards for reforestation and afforestation.*

1029 (1) *Priorities for reforestation and afforestation.*

1030 (A) [Preferred sequence.] Except as provided [in] by  
 1031 regulation or in the technical manual or otherwise in  
 1032 [paragraph] (1) of this subsection, the preferred sequence  
 1033 for afforestation and reforestation is [, in general:  
 1034 enhancement of existing forest through on-site selective  
 1035 clearing, supplemental planting, or both; on-site  
 1036 afforestation or reforestation, including techniques which  
 1037 encourage natural regeneration where feasible;  
 1038 landscaping with an approved plan; and off-site  
 1039 afforestation or reforestation, including techniques which  
 1040 encourage natural regeneration where feasible] identified  
 1041 in subsection (a).

1042 (B) [Governmental] Government considerations. The  
 1043 sequence provided in subparagraph (A) of this paragraph  
 1044 may be modified for a specific project if the applicant  
 1045 demonstrates to the satisfaction of the Planning Board or  
 1046 the Planning Director, as the case may be, that a different  
 1047 sequence is necessary:

1048 (i) to achieve the objectives of a master or sector plan  
 1049 or other County land use policies or to take

1050 advantage of opportunities to consolidate forest  
1051 conservation efforts;

1052 (ii) for public [site] sites acquired or required to be  
1053 dedicated before July 1, 1991, to ensure that the  
1054 site can be used for its intended purpose without  
1055 major design changes; or

1056 (iii) for educational, recreational, and public safety  
1057 facilities, to ensure that public safety is not  
1058 compromised.

1059 [(C) *Public Utility Considerations.* The sequence provided in  
1060 subparagraph (A) of this paragraph for public utility  
1061 projects may be modified to reflect applicable electrical  
1062 or other safety codes, or right-of-way constraints.]

1063 (2) *Off-site afforestation and reforestation.* In addition to the use  
1064 of other sites proposed by an applicant and approved by the  
1065 County, off-site afforestation or reforestation may also include:

1066 (A) Forest mitigation banks designated in advance by the  
1067 County.

1068 (B) Protection of existing off-site forest. Acquisition of an  
1069 off-site protective easement for existing forested areas  
1070 not currently protected is an acceptable mitigation  
1071 technique instead of off-site afforestation or reforestation  
1072 planting, but the forest cover protected must be 2 times  
1073 the afforestation and reforestation requirements.

1074 (C) For sites located in existing population centers, [use of]  
1075 street trees [which meet landscape or streetscape goals  
1076 identified in an applicable master plan] may be used if

1077                   the applicant demonstrates to the satisfaction of the  
1078                   Planning Board or Planning Director that on-site  
1079                   afforestation is inappropriate.

1080           [(3) *Priority areas and plantings.* Afforestation and reforestation  
1081           should be directed to stream buffer areas, connections between  
1082           and additions to forested areas, critical habitat areas,  
1083           topographically unstable areas, and land use and road buffers.  
1084           The use of native plant materials is preferred. Unless the  
1085           Planning Board or Planning Director order otherwise, the  
1086           required use of natural regeneration under this Chapter  
1087           supercedes any prohibition under Chapter 58.]

1088           [(4) *Location requirements.* Required reforestation or afforestation  
1089           must occur in both the county and watershed in which the  
1090           project is located, except that if it cannot be reasonably  
1091           accomplished in the same county and watershed in which the  
1092           project is located, then the reforestation or afforestation may  
1093           occur anywhere in either the county or watershed in which the  
1094           project is located.]

1095           [(5) *Deadline for plant installation.* The afforestation and  
1096           reforestation requirements under this subsection must be  
1097           accomplished within one year or 2 growing seasons after a  
1098           development project is complete.]

1099           [(6)] (d) *Planned Unit Developments; Other Staged Development.*  
1100           Notwithstanding any other provision of this Section, the Planning  
1101           Board may allow any afforestation or reforestation requirement for a  
1102           planned unit development to be calculated and satisfied within the  
1103           total area covered by the development plan or project plan instead of

1104 the net tract area. Similarly, the Planning Board may allow any  
 1105 afforestation or reforestation requirement applicable to a staged  
 1106 development subject to a single preliminary plan of subdivision but  
 1107 with separate site plan reviews for each stage to be calculated and  
 1108 satisfied using the total area covered by the preliminary plan of  
 1109 subdivision.

1110 [(f)] (e) *Special provisions for minimum retention, reforestation and*  
 1111 *afforestation.*

1112 (1) *General.* Any site developed in an agricultural and resource  
 1113 area, any planned unit development, any site developed under a  
 1114 cluster or other optional method of development in a one-family  
 1115 residential zone, and any waiver from a zoning requirement for  
 1116 environmental reasons, must include a minimum amount of  
 1117 forest on-site as part of meeting its total forest conservation  
 1118 requirement.

1119 (2) *Retention, reforestation and afforestation.* Forest retention  
 1120 should be maximized where possible on each site listed in this  
 1121 subsection. At a minimum, on-site forest retention, and in some  
 1122 cases reforestation and afforestation, must be required as  
 1123 follows:

1124 (A) In an agricultural and resource area, on-site forest  
 1125 retention must equal 25% of the net tract area.

1126 (B) In a planned development or a site development using a  
 1127 cluster or other optional method of development in a one-  
 1128 family residential zone, on-site forest retention must  
 1129 equal the applicable conservation threshold in subsection

1130 (a). This requirement also applies to any site seeking a

1131 waiver or variance from base zone standards under  
 1132 Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-  
 1133 1.621, or 59-C-7.131, if as a condition of the waiver or  
 1134 variance the Planning Board or County Council must find  
 1135 that the resulting development is environmentally more  
 1136 desirable.

1137 (C) On a site covered by this subsection, if existing forest is  
 1138 less than the minimum required retention, all existing  
 1139 forest must be retained and on-site afforestation up to the  
 1140 minimum standard must be provided. If existing forest is  
 1141 less than the applicable afforestation threshold in  
 1142 subsection [(a)] (b), the afforestation threshold is the  
 1143 minimum on-site forest requirement.

1144 (D) If a site covered by this subsection is unforested, on-site  
 1145 afforestation must equal the applicable afforestation  
 1146 threshold.

1147 [(3)] (E) If the Planning Board or Planning Director, as  
 1148 appropriate, finds that forest retention required in this  
 1149 subsection is not possible, the applicant must provide the  
 1150 maximum possible on-site retention in combination with  
 1151 on-site reforestation and afforestation, not including  
 1152 landscaping and street trees.

1153 [(4)] (F) Retention, reforestation, and afforestation must adhere  
 1154 to the priorities and sequence established in subsections  
 1155 [(b) and (e)] (a) and (c).

1156 [(g)] (f) *In lieu fee.*

1157 (1) *General.* If a person satisfactorily demonstrates that the  
 1158 requirements for reforestation or afforestation on-site or off-site  
 1159 cannot be reasonably accomplished, the person must contribute  
 1160 money to the forest conservation fund at a rate specified by the  
 1161 County Council by law or resolution, but not less than the rate  
 1162 required under Section 5-1610 of the Natural Resources Article  
 1163 of the Maryland Code. The requirement to contribute money  
 1164 must be met before any clearing or grading occurs within [90  
 1165 days after development project completion] the tract.

1166 (2) *Specific development situations.* Except as specified in  
 1167 subsection [(f)] (e), the Planning Board or Planning Director  
 1168 may allow an applicant to pay into the County Forest  
 1169 Conservation Fund instead of providing afforestation[,]or  
 1170 reforestation[, or landscaping] in the following situations:

1171 (A) *Afforestation using tree cover.* If an applicant has shown  
 1172 that on-site afforestation using forest cover is not  
 1173 appropriate under subsection [(d)(2)] (b)(3)(B), the  
 1174 applicant may pay the fee instead of using tree cover to  
 1175 meet any afforestation requirement.

1176 (B) *Afforestation or reforestation using [landscaping] tree*  
 1177 *cover.* An applicant may pay the fee instead of using  
 1178 credit for [landscaping] tree cover.

1179 \* \* \*

1180 [(h)] (g) Agreements and Long-Term Protection.

1181 (1) Maintenance agreement. A forest conservation plan must  
 1182 include a [two] 5-year binding agreement for maintenance of  
 1183 conservation areas, including the watering (as practical),

1184 feeding, [and ] replanting of areas to be afforested or reforested,  
 1185 and non-native and invasive management. The [2-year] 5-year  
 1186 period starts upon satisfactory final inspection of the  
 1187 conservation measures required under the [forest conservation  
 1188 plan] Forest Conservation Plan. A staged project may have  
 1189 more than one agreement.

1190 \* \* \*

1191 [(i)] (h) *Financial Security*.

1192 (1) *Security required*. Except as provided in paragraph (8) of this  
 1193 subsection, an approved financial security instrument must be  
 1194 required to ensure:

1195 (A) compliance with all requirements of an approved forest  
 1196 conservation plan including afforestation, reforestation,  
 1197 and maintenance; [or]

1198 (B) full payment of funds to be paid instead of afforestation  
 1199 or reforestation, if required under subsection [(g).] (f); or

1200 (C) compliance with all requirements of a Tree Protection  
 1201 Plan.

1202 \* \* \*

1203 (3) *When required*. The financial security instrument must be  
 1204 provided prior to any land disturbing activity [, as defined in  
 1205 Chapter 19, occurring on a section of the tract subject to the  
 1206 forest conservation plan].

1207 (4) *Amount required*.

1208 (A) If the financial security is required under [subparagraph]  
 1209 subsection (1)(A) [of this subsection], the security  
 1210 instrument must be in an amount equal to:

- 1211 (i) the in lieu fee rate; or
- 1212 (ii) the estimated cost of afforestation, reforestation,
- 1213 and maintenance [applicable to the section of the
- 1214 tract subject to the land disturbing activity] of
- 1215 planted areas as well as non-native and invasive
- 1216 management.

1217 The instrument must include a provision for adjusting the  
 1218 amount based on actual costs. The Planning Director  
 1219 must notify the obligee of any proposed adjustment and  
 1220 provide the opportunity for an informal conference.

- 1221 (B) If the financial security is required under [subparagraph]
- 1222 subsection (1)(B) [of this subsection], the security
- 1223 instrument must be in an amount equal to the in lieu
- 1224 payment.

1225 \* \* \*

- 1226 (6) Events of forfeiture. The financial security instrument may be
- 1227 subject to forfeiture on:

- 1228 (A) failure of the obligee to perform the work under the
- 1229 [forest conservation plan] Forest Conservation Plan in
- 1230 accordance with the required schedule; or

- 1231 (B) failure of the obligee to pay a required in lieu fee in a
- 1232 timely manner.

1233 \* \* \*

1234 **22A-13. Forest mitigation banks.**

- 1235 (a) A person may create a forest mitigation bank from which applicants
- 1236 may buy credits by afforesting or reforesting an area of land under a
- 1237 forest mitigation bank plan approved by the Planning Director.

1238 (b) A person can create a forest mitigation bank by permanently  
 1239 protecting:

1240 (1) existing forest;

1241 (2) planting and protecting new forests in unplanted environmental  
 1242 buffers or in areas contiguous to existing and protected forests;  
 1243 or

1244 (3) a combination of the two.

1245 [(b)] (c) The area of land where the bank is planted must be at least 1 acre.

1246 [(c)] (d) A forest mitigation bank must use native plants for afforestation and  
 1247 reforestation[, unless inappropriate].

1248 [(d)] (e) A person proposing to create a forest mitigation bank must submit a  
 1249 plan to the Planning Director, [which must include] that includes:

1250 (1) a [2-year] 5-year maintenance agreement which meets the  
 1251 standards in subsection [22A-12(h)(1)] 22A-12(g)(1);

1252 (2) all information required by subsection [22A-10(c)]  
 1253 22A-10(b)(2) for a [forest conservation plan] Forest  
 1254 Conservation Plan; and

1255 (3) the draft easement, covenants, or deed restrictions for the area  
 1256 to be sold to the developer when credits are withdrawn from the  
 1257 bank.

1258 [(e)] (f) Forest mitigation banks must be established in accordance with the  
 1259 priority areas described in subsection [22A-12(e)(3)] 22A-12(b)(2), or  
 1260 in areas identified in a master plan or functional plan.

1261 [(f)] (g) Credits must not be debited from a forest mitigation bank until all  
 1262 trees have been planted and accepted by the Planning Director, and  
 1263 either financial security which meets the standards in subsection  
 1264 [22A-12(i)] 22A-12(h) has been provided or the Planning Director has

1265 found that a sufficient number of trees have successfully survived for  
1266 [2] 5 years after planting.

1267 [(g)] (h) To debit credits from an approved forest mitigation bank, the  
1268 easement, covenants, or deed restrictions which assure that the newly  
1269 reforested or afforested area of land remains a forest in perpetuity  
1270 must be conveyed to the Planning Board or its assignee and the  
1271 applicant must show that credits are available and the applicant has  
1272 the right to debit them. The credits must buy an amount of land equal  
1273 to the applicant's off-site reforestation or afforestation requirements  
1274 under its approved forest conservation plan.

1275 **22A-15. Inspections and notification.**

1276 (a) *Permission to gain access.* [Authorized representatives of the  
1277 Planning Department] Representatives authorized by the Planning  
1278 Director may enter properties subject to this Chapter for the purpose  
1279 of inspection, review and enforcement.

1280 (b) *Forest Conservation Plan to be on site; field markings.* A copy of the  
1281 approved forest conservation plan must be available on the site for  
1282 inspection by [authorized] representatives authorized by the Planning  
1283 Director. Field markings must exist on site during installation of all  
1284 protective devices, construction, or other land disturbing activities.

1285 (c) *Required inspections.*

1286 (1) The Planning Department [should] must conduct [at least 3]  
1287 field inspections of a site subject to confirm the information  
1288 submitted on a Natural resource Inventory/Forest Stand  
1289 Delineation.

1290 (2) The Planning Department must conduct field inspections of a  
1291 site [tract] subject to an approved [forest conservation plan]

1292 Forest Conservation Plan]. The inspections should take place]  
 1293 as follows:

1294 [(1) The first inspection should take place before any land  
 1295 disturbing activities (including clearing, grading, or stripping)  
 1296 occurs on the tract to determine if protective measures have  
 1297 been properly installed and conservation areas clearly marked;

1298 (2) The second inspection should take place following completion  
 1299 of all land disturbing activities and afforestation or reforestation  
 1300 to determine the level of compliance with the forest  
 1301 conservation plan; and

1302 (3) The third inspection should take place at the end of the  
 1303 maintenance agreement 2-year time period.]

1304 (A) after the limits of disturbance have been staked and  
 1305 flagged, but before any clearing or grading begins;

1306 (B) after necessary stress reduction measures have been  
 1307 completed and the protection measures have been  
 1308 installed, but before any clearing or grading begins;

1309 (C) after completion of all construction activities to  
 1310 determine the level of compliance with the provisions of  
 1311 the forest conservation plan;

1312 (D) before the start of any required reforestation and  
 1313 afforestation planting;

1314 (E) after required reforestation and afforestation planting has  
 1315 been completed to verify the planting is acceptable and  
 1316 begin the 5-year maintenance period; and

1317 (F) at the end of the 5-year maintenance period to determine  
 1318 the level of compliance with the provisions of the

1319 planting plan and, if appropriate, authorize release of the  
 1320 financial security.

1321 (3) The Planning Department must conduct field inspections of a  
 1322 site subject to a tree protection plan as follows:

1323 (A) after the limits of disturbance have been staked and  
 1324 flagged, but before any clearing or grading begins;

1325 (B) after necessary stress reduction measures have been  
 1326 completed and the protection measures have been  
 1327 installed, but before any clearing or grading begins; and

1328 (C) after completion of all construction activities to  
 1329 determine the level of compliance with the provisions of  
 1330 the tree protection plan.

1331 (d) *Other inspections.* The Planning [Department] Director may [conduct  
 1332 other] authorize additional inspections or meetings as necessary to  
 1333 administer this Chapter], including an inspection to confirm a forest  
 1334 stand delineation].

1335 (e) *Required [notifications] scheduling of inspections for Forest*  
 1336 *Conservation and Tree Protection Plans.* Persons must notify the  
 1337 Planning Director 7 days prior to scheduling inspections under  
 1338 subsection (c).

1339 [(1) At least 2 working days before starting any land disturbing  
 1340 activities associated with the forest conservation plan, a person  
 1341 must notify the Planning Department. The Planning Department  
 1342 must coordinate its inspections, and any pre-construction  
 1343 conferences, with the Department of Permitting Services to  
 1344 avoid inconsistent directives in the field relating to the forest  
 1345 conservation plan and sediment control activities.

1346 (2) At least 2 working days before completion of afforestation and  
 1347 reforestation plantings, a person must notify the Planning  
 1348 Department so that the Department may schedule the second  
 1349 inspection specified under paragraph (c)(2) of this Section.]

1350 **22A-16. [Penalties] Violations, penalties, and other remedies.**

1351 \* \* \*

1352 **22A-17. Corrective [actions] order.**

1353 \* \* \*

1354 **22A-19. [Noncompliance with exemption conditions] Reserved.**

1355 [(a) Determination of noncompliance. A person who receives an  
 1356 exemption subject to a declaration of intent or for commercial logging  
 1357 and timber harvesting operations is in noncompliance if:

- 1358 (1) within 5 years, an application for a development or other  
 1359 approval regulated by this Chapter is submitted for the tract or  
 1360 lot covered by the exemption; or
- 1361 (2) the person otherwise violates this Chapter or the declaration of  
 1362 intent.]

1363 [(b) Penalties for noncompliance. In addition to any other remedies under  
 1364 this Chapter, the Planning Board may require a person in  
 1365 noncompliance to:

- 1366 (1) meet the forest conservation threshold as would have been  
 1367 required;
- 1368 (2) pay an administrative civil penalty under Section 22A-16(d) for  
 1369 the area of forest cut or cleared under the exemption; or
- 1370 (3) both.

1371 **22A-20. [Notice, hearings, and appeals] Appeals.**

- 1372            [(a) General. Except as provided under subsections (c) and (d) of this  
 1373            Section, the requirements for notice, public hearing, and  
 1374            administrative decision-making for the associated development  
 1375            approval must be followed when reviewing a forest stand delineation  
 1376            or forest conservation plan.]
- 1377            [(b) Forest conservation plans and variances approved by the Planning  
 1378            Board or District Council.
- 1379                    (1) A person aggrieved by the decision of the Planning Board on  
 1380                    the approval, denial, or modification of a forest conservation  
 1381                    plan (including a request for a variance) may file a judicial  
 1382                    appeal of the final administrative action on the development  
 1383                    approval in accordance with Subtitle B of the Maryland Rules  
 1384                    of Procedure and any other law applicable to the proceeding.
- 1385                    (2) A person aggrieved by the decision of the District Council on  
 1386                    the approval, denial, or modification of a forest conservation  
 1387                    plan (including a request for a variance) proposed in  
 1388                    conjunction with a development plan may file a judicial appeal  
 1389                    of the action on the development plan in accordance with  
 1390                    Division 59-H-8.]
- 1391            [(c) Forest stand delineations and forest conservation plans approved by  
 1392            the Planning Director.
- 1393                    (1) Appeal to Planning Board. Upon receipt of the Planning  
 1394                    Director's written decision on a forest stand delineation or forest  
 1395                    conservation plan, an applicant has 30 days in which to appeal  
 1396                    to the Planning Board.
- 1397                    (2) Hearing; decision. The Planning Board must hold a hearing on  
 1398                    the appeal and inform the applicant in writing of its decision.

1399 The Board must consider the appeal de novo. For purposes of  
1400 judicial review, the decision of the Planning Board constitutes  
1401 final agency action.

1402 (3) Appeal. Upon receipt of the Planning Board's decision, an  
1403 applicant has 30 days in which to appeal the decision in  
1404 accordance with Subtitle B of the Maryland Rules of  
1405 Procedure.]

1406 [(d) Administrative enforcement actions.

1407 (1) Notice. A complaint, order, or other administrative notice  
1408 issued by the Planning Director under this Article must be  
1409 served on the alleged violator personally, on the violator's agent  
1410 at the activity site, or by certified mail to the violator's last  
1411 known address. The notice must identify the alleged violator,  
1412 the location of the violation, and the specific facts of the  
1413 violation, and must give the alleged violator the opportunity for  
1414 a hearing before the Planning Board within 10 working days of  
1415 receipt of the notice. If an administrative action under this  
1416 Article can only be taken by the Board, the notice must state the  
1417 date on which the action is scheduled to be considered by the  
1418 Board.

1419 (2) Hearing. If an opportunity for a hearing is requested, the matter  
1420 must be expeditiously scheduled on a Planning Board agenda  
1421 unless the alleged violator consents to a delay. The filing of a  
1422 request for a hearing does not stay an administrative order to  
1423 stop work, stabilize a site, or stop a violation.

1424 (3) Decision. The Planning Board must inform the alleged violator  
1425 in writing of its decision on an administrative enforcement

1426 action. The Board's decision constitutes final agency action for  
 1427 purposes of judicial review.

1428 (4) Appeal. Upon receipt of the Planning Board's decision, an  
 1429 aggrieved person has 30 days in which to appeal the Board's  
 1430 action in accordance with Subtitle B of the Maryland Rules of  
 1431 Procedure.]

1432 (a) Natural Resource Inventory/Forest Stand Delineations and Forest  
 1433 Conservation or Tree Protection Plans approved by the Planning  
 1434 Director.

1435 (1) Appeal to Planning Board. An applicant has 30 days from the  
 1436 date of the Planning Director's written decision on a Natural  
 1437 Resource Inventory/Forest Stand Delineation or Forest  
 1438 Conservation or Tree Protection Plan to appeal to the Planning  
 1439 Board.

1440 (2) Hearing; decision. The Planning Board must hold a de novo  
 1441 hearing. The Board must issue a written resolution to the  
 1442 applicant setting forth its decision. For purposes of judicial  
 1443 review, the decision of the Planning Board constitutes final  
 1444 agency action. Applicants may petition for judicial review of  
 1445 the Planning Board decision in accordance with Maryland  
 1446 7-200 Rules.

1447 (b) Forest Conservation or Tree Protection Plans and variances  
 1448 approved by the Planning Board. A person aggrieved by the decision  
 1449 of the Planning Board on the approval, denial, or modification of a  
 1450 Forest Conservation or Tree Protection Plan (including a request for a  
 1451 variance) may file a petition for judicial review of the administrative  
 1452 agency decision on the development approval in accordance with the

1453 Maryland Rules of Court and any other law applicable to the  
 1454 proceeding.

1455 **Sec. 22A-21. Variance provisions.**

1456 (a) *Written request.* [A person] An applicant may request in writing a  
 1457 variance from this Chapter or any regulation adopted under it if the  
 1458 person demonstrates that enforcement would result in unwarranted  
 1459 hardship to the person. A request for a variance [waives] suspends the  
 1460 time requirements in Section 22A-11 until the Planning Board has  
 1461 acted upon the request.

1462 \* \* \*

1463 (c) *Referral to other agencies.* Before considering a variance, the  
 1464 Planning Board must refer a copy of each request to the County  
 1465 Arborist, Planning [Department] Director, and other appropriate  
 1466 officials or agencies for a written recommendation before acting on  
 1467 the request. Recommendations must be submitted to the Planning  
 1468 Board within 30 days from the receipt [by the official or agency] of  
 1469 the [request] referral or the recommendation [should] must be  
 1470 presumed to be favorable.

1471 (d) *Minimum criteria.* A variance may only be granted if it meets the  
 1472 provisions of subsection (a) and (b) above. A variance must not be  
 1473 granted if granting the request:

- 1474 (1) will confer on the applicant a special privilege that would be  
 1475 denied to other applicants;
- 1476 (2) is based on conditions or circumstances which are the result of  
 1477 the actions by the applicant;
- 1478 (3) arises from a condition relating to land or building use, either  
 1479 permitted or nonconforming, on a neighboring property; or

1480 (4) will violate State water quality standards or cause measurable  
1481 degradation in water quality.

1482 (e) *Approval procedures; Conditions.* The Planning Board[, or the  
1483 District Council on a development plan,] must [make findings] find  
1484 that the applicant has met all requirements of this Section before  
1485 granting a variance. Appropriate conditions may be imposed to  
1486 promote the objectives of this Chapter and protect the public interest.

1487 (f) *Notice to State Department of Natural Resources; Right to initiate or*  
1488 *intervene in proceedings.*

1489 (1) Notice of a pending variance request must be given to the  
1490 Department of Natural Resources within 15 days of receipt of a  
1491 request for a variance.

1492 (2) The Department of Natural Resources may initiate or intervene  
1493 in an administrative, judicial or other original proceeding or  
1494 appeal in the State concerning an approval of a variance.

1495 **22A-26. [Regulations] General.**

1496 (a) [Adoption] Regulations. The Planning Board must adopt regulations,  
1497 including necessary procedures, to administer this Chapter. In  
1498 adopting the regulations, the Board must follow the adoption  
1499 procedures for a Method (2) regulation under Section 2A-15 and any  
1500 requirements applicable under State law. However, a proposed  
1501 regulation of a procedural nature or that would implement changes in  
1502 State law or regulation, may be adopted under Method (3) if it is  
1503 consistent with this Chapter. The regulations must include procedures  
1504 to amend a forest conservation plan and a declaration of intent.

1505 (b) *Technical manual.* The Planning Director must prepare a technical  
1506 manual that must include guidance and methodologies for:

- 1507 (1) preparing and evaluating a [forest stand delineation and natural  
 1508 resource inventory] Natural Resource Inventory/Forest Stand  
 1509 Delineation;
- 1510 (2) preparing and evaluating a [forest conservation plan] Forest  
 1511 Conservation Plan, including priorities for forest retention,  
 1512 reforestation, and afforestation, and a recommended tree  
 1513 species list;
- 1514 (3) preparing and evaluating a Tree Inventory and Tree Protection  
 1515 Plan;
- 1516 [(3)] (4) providing forest or tree protective measures during and after  
 1517 clearing or construction, including planting, tree relocation, and  
 1518 maintenance;
- 1519 [(4)] (5) inspection and monitoring [and enforcement] of site for  
 1520 compliance with [forest conservation plans] Forest  
 1521 Conservation and Tree Protection Plans; and
- 1522 (6) other appropriate guidance for program requirements consistent  
 1523 with this Chapter and the regulations.
- 1524 [(c)] *Development agreements; Conservation easements.* The Planning  
 1525 Board may in the regulations require developer agreements,  
 1526 conservation easements, land trusts, covenants, and deed restrictions  
 1527 as part of an approved forest conservation plan.]
- 1528 [(d)] (c) *Administrative fee.* The Planning Board must [charge] establish a  
 1529 fee [to cover] schedule that at least partially covers the costs of  
 1530 administering this Chapter[, including review of submittals and field  
 1531 inspections. The fee schedule must be set by the Planning Board as  
 1532 part of the development application process. Different fees may be set

1533 based on the size of the tract or other relevant factors]. Fee schedules  
 1534 may be reviewed as needed.

1535 [(e) *Additional regulations.* Notwithstanding any other provision of this  
 1536 Chapter, the Planning Board may, by regulation adopted under  
 1537 Method (3), require preapplication submissions for a forest stand  
 1538 delineation and allow modified application submissions or procedures  
 1539 for development projects of a minor scale or public utility projects.]

1540 [(f)] (d) *Reports.* The Planning Board must make all reports on the County  
 1541 forest conservation program to the General Assembly and State  
 1542 Department of Natural Resources that are required under State law or  
 1543 regulation. The reports [should be reviewed by the County Arborist  
 1544 for comment, and copies of all final reports] must be transmitted to  
 1545 the County Council and County Executive.

1546 [(g)] (e) *List of Off-Site Property for Mitigation.* The Planning Director  
 1547 [should] may develop and maintain a list of properties [that may be]  
 1548 suitable for off-site mitigation required under [forest conservation  
 1549 plans] Forest Conservation Plans. [The Planning Director should  
 1550 develop the list in coordination with the County Arborist, the  
 1551 Department of Environmental Protection, the Department of Public  
 1552 Works and Transportation, the Department of Economic  
 1553 Development, the Soil Conservation District, and other appropriate  
 1554 agencies.]

1555 [(h) *Sediment Control Permit Applications.* The Planning Director and the  
 1556 Director of the Department of Environmental Protection should  
 1557 develop administrative procedures to prevent, to the extent possible,  
 1558 circumvention of this Chapter by a person who obtains a sediment  
 1559 control permit for land disturbing activities on less than 40,000 sq. ft.

1560 of land and who later seeks preliminary plan of subdivision approval  
 1561 for the same land. These procedures may include requiring an  
 1562 applicant for a sediment control permit to submit a declaration of  
 1563 intent enforceable under Section 22A-19.]

1564 **22A-27. Forest conservation fund.**

1565 There is a County forest conservation fund. Money deposited into the [fund]  
 1566 Fund must be used in accordance with the adopted County budget and in  
 1567 accordance with the following:

1568 (a) *In lieu fees.* Money deposited in the [forest conservation fund instead  
 1569 of planting] Forest Conservation Fund must be spent on the  
 1570 reforestation and afforestation for which the money is deposited,  
 1571 including costs directly related to site identification, acquisition,  
 1572 design, and preparation, and must not revert to the [general fund]  
 1573 General Fund. The permanent preservation of priority forests,  
 1574 including identification and acquisition of a site, may be substituted  
 1575 for reforestation and afforestation at a rate of 2 acres of forest  
 1576 preservation for each acre of planting required. Funds remaining after  
 1577 all reforestation and afforestation requirements are satisfied may be  
 1578 spent on any other tree conservation activity, including street tree  
 1579 planting.

1580 (b) *Penalties.* Money collected for noncompliance with a [forest  
 1581 conservation plan] Forest Conservation Plan or the associated [2-year]  
 1582 5-year maintenance agreement must be deposited in a separate  
 1583 account in the [forest conservation plan] Forest Conservation Plan and  
 1584 must not revert to the General Fund. Money deposited in this [fund]  
 1585 Fund may be used to administer this Chapter or any purpose set forth  
 1586 in the Fund.

## 1587 [Article V. County Arborist.]

1588 [22A-30. County Arborist.] Reserved.

1589 [(a) *Appointment.* The Director of the Department of Environmental  
1590 Protection must appoint a person to serve as County Arborist. The  
1591 County Arborist functions within the Department of Environmental  
1592 Protection.]

1593 [(b) *Qualifications.* The County Arborist must have relevant experience  
1594 and an advanced degree in horticulture, forestry, forest ecology, plant  
1595 pathology, landscape architecture, or other related field, or an  
1596 equivalent combination of education and experience. The County  
1597 Arborist should be licensed as a tree expert under State law.]

1598 [(c) *Duties.* The County Arborist has the following functions related to  
1599 resource management and protection of forest and trees in the County:

- 1600 (1) develop a comprehensive County conservation and  
1601 management strategy, including programs designed to promote  
1602 afforestation and reforestation in the County, and the survival  
1603 of historic trees and any endangered tree species;
- 1604 (2) advise the County Executive and County Council on the  
1605 effectiveness of County programs for controlling tree pests and  
1606 diseases;
- 1607 (3) review and approve proposed commercial logging and timber  
1608 harvesting operations under Article II;
- 1609 (4) review variance requests and reports under Article II;
- 1610 (5) provide liaison with citizens and businesses on forest and tree  
1611 conservation issues and develop appropriate mechanisms for  
1612 public input on conservation strategies; and

1613 (6) any other duties required by law or assigned by the County  
 1614 Executive.]

1615 **[22A-31. Forest Conservation Advisory Committee] Reserved.**

1616 [(a) *Definition.* In this section "Committee" means the Forest  
 1617 Conservation Advisory Committee.]

1618 [(b) *Established.* The County Executive must appoint, subject to  
 1619 confirmation by the County Council, a Forest Conservation Advisory  
 1620 Committee.]

1621 [(c) *Composition and terms of members.*

1622 (1) The Committee has 15 public members. The public members  
 1623 should include:

1624 (A) Landscape architects;

1625 (B) Arborists and urban foresters;

1626 (C) Horticulturists and representatives from the nursery  
 1627 industry;

1628 (D) Persons directly engaged in agriculture;

1629 (E) Persons directly involved in the building industry;

1630 (F) Members of citizen groups;

1631 (G) Member of environmental an conservation organizations;  
 1632 and

1633 (H) Representatives of public utility companies.

1634 (2) The Executive must designate a staff member from each of the  
 1635 following departments to serve as an ex officio member;

1636 (A) Economic Development;

1637 (B) Environmental Protection; and

1638 (C) Public Works and Transportation.

- 1639 (3) The Executive must invite a representative from each of the  
 1640 following agencies to serve as an ex officio member;  
 1641 (A) The County Planning Board; and  
 1642 (B) The Washington Suburban Sanitary Commission.  
 1643 (4) The term of each member is 3 years and expires on December  
 1644 31. After an appointment to fill a vacancy before a term  
 1645 expires, the successor serves the rest of the unexpired term.]

1646 [(d) *Voting, officers, meetings, and compensation.*

- 1647 (1) All members of the Committee are voting members.  
 1648 (2) Each January, the Executive may designate a chair and vice-  
 1649 chair from among the Committee's public members to serve a  
 1650 1-year term. If the County Executive does not designate a chair  
 1651 or vice-chair by February 15, the Committee members must  
 1652 select a chair and vice-chair.  
 1653 (3) The Committee meets at the call of the Chair. The Committee  
 1654 must meet as often as necessary to perform its duties, but not  
 1655 less than 9 times a year.  
 1656 (4) A member must serve without compensation. However, a  
 1657 member may request reimbursement for mileage and dependent  
 1658 care costs at rates established by the County.]

1659 [(e) *Duties.*

- 1660 (1) Advise the Executive, Council, Planning Board, and any other  
 1661 relevant agency on forestry policy issues;  
 1662 (2) Propose to the Executive, Council, Planning Board, and any  
 1663 other relevant agency, proactive forestry policies, laws, and  
 1664 guidelines;  
 1665 (3) Recommend a comprehensive approach to urban forestry;

- 1666 (4) Advise on a tree inventory;
- 1667 (5) Review and comment on policies and programs related to
- 1668 forestry;
- 1669 (6) Promote and seek funding for a sustained forestry program;
- 1670 (7) Promote and foster a strong sense of community through urban
- 1671 forestry;
- 1672 (8) Communicate with other boards, agencies, and community
- 1673 residents about forestry issues; and
- 1674 (9) Promote volunteerism and act as a general information source.]
- 1675 [(d) *Annual Report.* By October 1 each year, the Committee must submit
- 1676 to the Executive, Council, Planning Board, and any other relevant
- 1677 agency, an annual report on its functions, activities, accomplishments,
- 1678 and plans and objectives.]
- 1679 [(e) *Advocacy.* The Committee must not engage in any advocacy activity
- 1680 at the State or federal levels unless that activity is approved by the
- 1681 Office of Intergovernmental Relations.]
- 1682 [(f) *Staff.* The Chief Administrative Officer must provide appropriate
- 1683 staff to the Committee.]

1684 *Approved:*

1685

\_\_\_\_\_  
Michael Knapp, President, County Council

\_\_\_\_\_  
Date

1686 *Approved:*

1687

\_\_\_\_\_  
Isiah Leggett, County Executive

\_\_\_\_\_  
Date

B14-07



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MF  
CC  
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H  
KB

September 28, 2007 In File

030866



The Honorable Marilyn Praisner  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Planning Board's Recommended Amendments to the Forest Conservation Law

2007 OCT -1 PM 1:36

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

Dear President Praisner:

I am pleased to forward for the Council's consideration the Planning Board's recommended amendments to the Forest Conservation Law, Chapter 22A of the County Code. The Planning Board recommended forwarding the amendments to Council on September 20, 2007. The purpose of the amendments was to clarify and moderately strengthen the requirements to applicants.

The proposed changes to the law include:

**Level 1, 2 and 3 Reviews.** There is considerable confusion with "exemptions" in the existing law. The regulated community and the public incorrectly believe that an "exempt" property is exempt from Chapter 22A of the code, when they were only exempt from submitting a forest conservation plan. The proposed amendment removes "exemptions" and makes applicants subject to either a level 1, 2 or 3 reviews. A level 1 review includes a natural resource inventory/forest stand delineation and forest conservation plan. The level 2 review has a lesser requirement and would entail a tree inventory and a tree protection plan, but no forest conservation plan. Finally, the level 3 review would only require a declaration of intent.

**Thresholds.** The amendments forwarded today supports a 5 percent increase in the conservation threshold and afforestation thresholds for all land use categories except for the agricultural resource area land use category. The attached document does not support changes to the land use categories.

**Maintenance and Management Agreements.** The Planning Board amendment recommends an increase in the maintenance and management periods for planted forests from 2 years to 5 years throughout the county. This would make the entire County subject to the same requirements as currently required for plantings within Special Protection Areas.

**Financial Security.** Since there is a recommended increase in the maintenance and management period, it is only natural to extend the financial security requirements to the same 5 year-year period. This change is included in the amendment.

**Enforcement and Violations.** Throughout the process, planning staff has indicated to the Planning Board, the public, and Council staff, that the enforcement and violations sections in Article III of the Forest Conservation law would be consolidated in the enforcement rules of 50-41 for all M-NCPPC enforcement responsibilities. Staff proposed no changes to this section with the understanding and with the concurrence of Councilmember Elrich that modifications/amendments to the enforcement and violations section could occur in Council in response to the rules adopted under 50-41. The proposed enforcement rules are forthcoming for discussion.

**Effective date or grandfathering.** The Planning Board's amendment does not include an effective date or a grandfathering provision. This is an issue that needs to be addressed by the Council in their deliberations of the amendments.

**Tree Preservation Bill.** Prior to planning staff's work on revisions to the forest conservation law, Council and planning staff and the environmental/community groups recognized the need for a tree preservation bill. A tree preservation bill should complement the forest conservation law and cover properties not subject to the forest conservation law or properties subject to level 2 and 3 reviews. The tree protection bill should be administered by the Department of Permitting Services. A tree preservation bill is the appropriate tool to protect smaller parcels of land. For all these reasons, the Planning Board believes that Chapter 22A should not be revised to reduce the minimum lot size below 40,000 square feet. More tree protection and compensation can be achieved by a properly structured tree preservation bill than would be achieved by the forest conservation law.

Thank you for your attention to this matter. I would be delighted to answer any questions you or any other Council member may have about the proposed amendments.

Sincerely,



Royce Hanson  
Chairman

RH:MP:ss  
Enclosure

**AMENDMENT**

To Bill 37-07

**BY COUNCILMEMBER ELRICH**

PURPOSE: This amendment would:

- (1) make certain changes to certain criteria and requirements for certain level of reviews as proposed in Bill 37-07;
- (2) establish a County Forest Conservation Coordinator;
- (3) establish forest conservation requirements for County school projects;
- (4) allow the Planning Director to waive certain requirements only if the County Forest Conservation Coordinator concurs with the Planning Director;
- (5) require a tree expert to be licensed to perform duties assigned to a tree expert by the Forest Conservation Law;
- (6) specify that approval of certain documents may be revoked if the approving authority relied on false or misleading statements in approving the documents;
- (7) lower the threshold level of cutting and clearing required to trigger the Forest Conservation Law;
- (8) amend certain retention, afforestation, and reforestation requirements;
- (9) amend certain ratios of forest removed to forest planted;
- (10) amend certain forest mitigation requirements and procedures;
- (11) amend certain variance requirements;
- (12) modify certain Forest Conservation Fund requirements;
- (13) establish certain grandfathering criteria;
- (14) prohibit the Director of Permitting Services from issuing a building permit if land was cleared in violation of the forest conservation law;
- (15) require certain applicants to notify certain other property owners of certain proposed actions under the forest conservation law, and specify the time period for notice to property owners and the Planning Director;
- (16) allow an aggrieved party to file a private civil action to enforce the forest conservation law;
- (17) make clarifying changes to Bill 37-07; and
- (18) generally amend the Forest Conservation Law.

*Beginning on page 2, add after line 2:*

1 **8-25. Permits.**

2 (a) *Action on application.* The Director must examine or cause to be  
3 examined each application for a building permit or an amendment to a  
4 permit within a reasonable time after the application is filed. If the  
5 application or the plans do not conform to all requirements of this  
6 Chapter, the Director must reject the application in writing and  
7 specify the reasons for rejecting it. If the proposed work conforms to  
8 all requirements of this Chapter and all other applicable laws and  
9 regulations, including Chapter 22A, the Director must issue a permit  
10 for the work as soon as practicable.

11 (c) [[Reserved.]] *Compliance with Forest Conservation Law.* The  
12 Director must not issue a permit for any structure that would be  
13 located on, in, or under land from which any tree or other woody plant  
14 has been cut, cleared, or graded in violation of Chapter 22A for 5  
15 years.

*Beginning on page 2, amend lines 14-16 to read:*

16 (b) *Purpose.* The purpose of this Chapter is to:  
17 (1) save, maintain, and plant trees and forested areas for the benefit  
18 of County residents and future generations with the goal of no  
19 forest net loss;

*Beginning on page 3, amend lines 32-33 to read:*

20 Afforestation threshold means a specific percentage of a tract which is used  
21 to determine the afforestation requirements.

22 *Agricultural activity* means farming activities conducted as part of a  
23 recognized commercial enterprise, including: plowing, tillage, cropping,  
24 installation of best management practices, seeding, cultivating, and  
25 harvesting for production of food and fiber products (except commercial  
26 logging ~~[[and]]~~ or timber harvesting operations), the grazing and raising of  
27 livestock, aquaculture, sod production, and the cultivation of orchard,  
28 nursery, and other products.

***Beginning on page 3, add after line 43 and amend lines 44-59 to read:***

29 *Champion class tree* means the largest tree of its species and all known trees  
30 of the same species within 10% of the point value of the existing Champion  
31 tree.

32 *Champion tree* means the largest tree of its species in the County, [as  
33 designated by the] as identified in the ~~[[County Forest Conservancy District~~  
34 ~~[Board] Board's Champion Tree Register [or its designee]]]~~ register of  
35 champion tree's maintained by the County Forest Conservation Coordinator.

36 \* \* \*

37 *Commercial logging* ~~[[or timber harvesting]]~~ *operation* means the cutting  
38 and removing of tree stems from a site for commercial purposes, leaving the  
39 root mass intact.

40 *Declaration of intent* means a signed and notarized statement by a  
41 landowner that the cutting of trees on the landowner's property:

42 (1) is for purposes [exempted under this Chapter; and] of complying with  
43 Sections 22A-6(b) and (c);

44 (2) no additional forest clearing activity ~~[[requiring a Forest Conservation~~  
45 ~~Plan]]~~ will occur on site within 7 years of the date of completion of  
46 the proposed activity; and

47 (3) will not circumvent the requirements of this Chapter.

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\* \* \*

[[*Development project completion* means the date or event identified in the forest conservation plan agreement, but no later than the date on which the first use-and-occupancy permit is issued for the development (or activity) subject to the preliminary plan of subdivision or sediment control permit or, if a use-and-occupancy permit is not required, the date on which the final building inspection or sediment control inspection (for activities not involving building) is conducted by the Department of Permitting Services. A staged development may have more than one completion date.]]

\* \* \*

*Environmental Buffer* means a strip of land generally contiguous with and parallel to any body of water, wetland, wetland buffer, 100-year floodplain, and a perennial or intermittent stream, [[ and stream buffer. An environmental buffer may also include a hydraulically connected]] steep slope and erodible soils.

***Beginning on page 4, amend lines 65-78 to read:***

*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 regardless of political or property boundaries. 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 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]

74 (2) forest areas that have been cut but not cleared[.]; and

75 (3) areas where at least one layer may not be present due to site  
76 conditions, pest predation, human impacts, or non-native species.

77 *Forest does not include an orchard.*

78 \* \* \*

***Beginning on page 4, add after line 78 to read:***

79 *Forest conservation threshold* means the percentage of the net tract area at  
80 which the reforestation ratio requirement changes [[from a ratio of ¼ acre  
81 planted for every one acre removed to a ratio of 2 acres planted for every  
82 one acre removed]].

***Beginning on page 5, amend line 83 to read:***

83 *Government Entity* means any federal, state, or local organization which in  
84 addition to having governmental character has sufficient discretion to  
85 distinguish it as separate from the administrative structure of any other  
86 governmental unit.

87 *High-density residential area* means an area zoned for densities greater than  
88 [[one]] 10 dwelling [[unit]] units per [[40,000 square feet]] acre, including  
89 both existing and planned development and their associated infrastructure,  
90 such as roads, utilities, and water and sewer service.

91 \* \* \*

92 [[*Institutional development* area means land occupied by uses such as  
93 schools, colleges and universities, military installations, transportation  
94 facilities, utility and sewer projects, government offices and facilities, fire  
95 stations, golf courses, recreation areas, parks, [and] cemeteries, and religious  
96 institutions. [In this Chapter, institutional development does not include a  
97 religious institution which is a permitted use in any zone and would not  
98 require a special exception.]]]



***Beginning on page 6, amend lines 108-117 to read:***

120 *Person* means:

- 121 (1) the federal government, the state, any county, [[municipal  
122 corporation]] municipality, or other political subdivision of the state,  
123 or any of their units[,];
- 124 (2) an individual, receiver, trustee, guardian, executor, administrator,  
125 fiduciary, or representative of any kind[,]; or
- 126 (3) any partnership, firm, common ownership community or other  
127 homeowners' association, public or private corporation or any of their  
128 affiliates or subsidiaries[, or].
- 129 [(4) any other entity. ]

***Beginning on page 6, add after line 118 to read:***

130 Priority planting area means environmental buffer areas, connections  
131 between and additions to forested areas, critical habitat areas,  
132 topographically unstable areas, and land use and road buffers.

***Beginning on page 6, add after line 124 to read:***

- 133 *Sediment control permit* means a permit required to be obtained for certain  
134 land disturbing activities:
- 135 (1) under Chapter 19, Article I;
- 136 (2) from the Washington Suburban Sanitary Commission for major  
137 utility construction as defined under regulations of the  
138 Commission; or
- 139 (3) from a [[municipal corporation]] municipality.

***Beginning on page 6, add after line 124 and amend lines 125-126 to read:***

140 Specimen tree means a tree as specified in the Forest Conservation  
141 Regulations.



- 166                    [[40,000]] 10,000 square feet or larger, and is not otherwise  
167                    required to obtain an approval under subsection (b)(1);
- 168            (3)    the person proposes to perform any cutting or clearing, or any  
169                    other land disturbing activity that would threaten the viability of  
170                    any champion class tree, wherever located;
- 171            (4)    the person is subject to mandatory referral or a park facility  
172                    plan on a tract of land [[40,000]] 10,000 square feet or larger  
173                    [[which is not excluded under subsection (c) or (d)]];
- 174            [[5) the person proposes highway construction not excluded under  
175                    subsections (c) or (d); and]]
- 176            [[6)) (5) a public or private utility proposes a cumulative limit of  
177                    disturbance of [[40,000]] 5,000 square feet or more for all  
178                    stages of work in a public right-of-way or utility easement[.];
- 179            (6)    a person removes any forest in an environmental buffer or any  
180                    forest located on a property in a special protection area; and
- 181            (7)    a person who proposes an activity that results in the cutting,  
182                    clearing, or grading of any trees or forest that are subject to an  
183                    approved Forest Conservation Plan or any forest conservation  
184                    or scenic easement with a government entity.
- 185            (c)    Level 2 Review. A person must submit to Level 2 Review if the  
186                    person proposes:
- 187                    (1)    construction on an existing single lot of [[40,000]] 10,000  
188                    square feet or greater in size a dwelling house, an addition to a  
189                    house, or an accessory structure (such as a pool, tennis court, or  
190                    shed), if the activity does not result in the cutting clearing, or  
191                    grading of:

192 (A) more than a total of ~~[[40,000]] 5,000~~ square feet of  
193 forest;

194 ~~[[(B) any forest in an environmental buffer;]]~~

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

197 ~~[[(D)]] (B) a person who will be disturbing any specimen or  
198 champion tree wherever located; or~~

199 ~~[[(E)]] (C) any trees or forest that are subject to a previously  
200 approved forest conservation plan or tree save plan.~~

201 (2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a  
202 lot line adjustment, conversion of an existing recorded outlot, or  
203 joining two or more existing residential lots into one lot, if:

204 (A) the only development located on the resulting lot is a  
205 single family dwelling unit or an accessory structure  
206 (such as a pool, tennis court, or shed); and

207 (B) development does not result in the cutting, clearing, or  
208 grading of:

209 (i) more than a total of ~~[[40,000]] 5,000~~ square feet of  
210 forest;

211 ~~[[(ii) any forest in an environmental buffer;]]~~

212 ~~[[(iii) any forest on property located in a special~~  
213 ~~protection area which must submit a water quality~~  
214 ~~plan;]]~~

215 ~~[[(iv)]] (ii) any specimen or champion tree; or~~

216                    ~~[(v)]~~ (iii) any tree or forest that is subject to the  
217                    requirements of a previously approved forest  
218                    conservation plan or tree save plan;

219                    (3) a modification to existing non-residential developed property if  
220                    less than 5,000 square feet of forest will be cleared; ~~[[and]]~~

221                    (4) a State or County highway construction activity that is subject  
222                    to Section 5-103 of the Natural Resources Article of the  
223                    Maryland Code, or Level 1 Review~~[[.]]~~; and

224                    (5) a person who proposes an activity that results in the cutting,  
225                    clearing, or grading of any trees or forest that are subject to an  
226                    approved Forest Conservation Plan or any forest conservation  
227                    or scenic easement with a government entity.

228                    (d) Level 3 Review. A person must submit to Level 3 Review if the  
229                    person:

230                    (1) proposes an agricultural activity that is exempt from:

231                    (A) platting requirements under Section 50-9; and

232                    (B) requirements to obtain a sediment control permit under  
233                    Section 19-2(c)(2).

234                    Agricultural support buildings and related activities are  
235                    excluded only if they are built using best management practices,  
236                    as defined by the Natural Resources Conservation Service;

237                    (2) proposes a tree nursery;

238                    (3) applies for a special exception for an existing structure and the  
239                    proposed use will not result in clearing of existing forest or  
240                    trees;

241           (4) proposes a commercial logging [[and]] or timber harvesting  
242           operation, including any harvesting conducted under the forest  
243           conservation and management program under Section 8-211 of  
244           the Tax-Property Article of the Maryland Code that has  
245           received:

246           (A) approval from the County [[Arborist or the Arborist's]]  
247           Forest Conservation Coordinator or the Coordinator's  
248           designee that the logging or timber harvesting plan is not  
249           inconsistent with County forest management objectives  
250           and is otherwise appropriate; and

251           (B) a sediment control permit from the Department of  
252           Permitting Services and posted the required financial  
253           security under Chapter 19. A person who qualifies under  
254           this subsection must provide a copy of all sediment  
255           control permits issued for commercial logging [[and]] or  
256           timber harvesting operations to the Montgomery County  
257           Planning Department.

258           (5) proposes a governmental project reviewed for forest  
259           conservation purposes by the State Department of Natural  
260           Resources under the Code of Maryland Regulations;

261           (6) conducts routine maintenance of public utility easements and  
262           rights-of-way, and routine maintenance of stormwater  
263           management facilities that are not subject to an existing  
264           conservation easement, except for the clearing of access roads;

265           (7) conducts utility or other work that is of an emergency nature;

- 266 (8) conducts noncoal surface mining regulated under Title 7 of the  
 267 Natural Resources Article of the Maryland Code; [[and]]
- 268 (9) cuts or clears public utility rights-of-way or land for electric  
 269 generating stations licensed under Section 54A and 54B or  
 270 Section 54I of Article 78 of the Maryland Code, if certificates  
 271 of public convenience and necessity have been issued under  
 272 Section 5-1603(f) of the Natural Resources Article of the  
 273 Maryland Code[.]
- 274 (10) proposes an activity that results in the cutting, clearing or  
 275 grading of any trees or forest that are subject to an approved  
 276 Forest Conservation Plan or any forest conservation or scenic  
 277 easement with a government entity.

*Beginning on page 23, add after line 564 to read:*

- 278 (b) If the forest to be cut or cleared for a County highway project equals  
 279 or exceeds ~~[[40,000]]~~ 10,000 square feet, the constructing agency  
 280 must reforest a suitable area at the rate of one acre of reforestation for  
 281 each acre of forest cleared.

*Beginning on page 23, add after line 564 to read:*

282 22A-9A. County School Projects.

283 (a) General.

- 284 (1) This Section applies to construction of a school by the County  
 285 as part of an approved capital Improvements Program project.
- 286 (2) The construction should minimize forest cutting or clearing and  
 287 loss of specimen or champion trees to the extent possible while  
 288 balancing other design, construction, and environmental  
 289 standards. The constructing agency must make a reasonable

290 effort to minimize the cutting or clearing of trees and other  
291 woody plants.

292 (b) If the forest to be cut or cleared for a County school project equals or  
293 exceeds 10,000 square feet, the constructing agency must reforest a  
294 suitable area at the rate of one acre of reforestation for each acre of  
295 forest cleared.

296 (c) Reforestation for County school projects must meet the standards in  
297 subsections 22A- 8(a), (c), and (g).

298 (d) Any mitigation requirement for loss of specimen or champion trees  
299 must be based on the size and character of the tree.

*Beginning on page 24, amend lines 601-602 to read:*

300 [(3)] (B) The Planning Director may waive any requirement for  
301 information that is unnecessary for a specific site if the  
302 County Forest Conservation Coordinator concurs.

*Beginning on page 25, amend lines 630-636 to read:*

303 [(2)] (B) A [forest conservation plan] Forest Conservation Plan  
304 [may] must include protective measures designed to  
305 conserve [significant and mature trees on adjacent  
306 property] trees on the subject tract, [[or]] and on adjacent  
307 properties, from adverse impacts that may be caused by  
308 the development or land disturbing activities proposed  
309 for the tract.

*Beginning on page 26, amend lines 647-676 to read:*

310       **(b)** Level 2 approval required. A person who is subject to Level 2 must  
311       submit to the Montgomery County Planning Department a Tree  
312       Inventory, Tree Protection Plan, and a Declaration of Intent.

313       **(1)** Tree Inventory.

314               **(A)** A Tree Inventory must be signed by a certified arborist,  
315               qualified professional, or a licensed tree expert, and  
316               must:

317                       **(i)** assess, identify, and characterize the tree species;

318                       **(ii)** estimate the height, age, and canopy of each tree;

319                       **(iii)** document the diameter of all trees on a tract; and

320                       **(iv)** provide other information or requirements  
321                               specified by regulation or in the technical manual.

322               **(B)** The Planning Director may waive any requirement for  
323               information that is unnecessary for a specific site if the  
324               County Forest Conservation Coordinator concurs.

325               **(C)** An approved Tree Inventory is not valid after 2 years  
326               unless a certified arborist, qualified professional, or a  
327               licensed tree expert recertifies the Tree Inventory or a  
328               Tree Protection Plan is approved.

329       **(2)** Tree Protection Plan

330               **(A)** A Tree Protection Plan must be signed by a certified  
331               arborist or qualified professional and used to protect trees  
332               during construction. A Tree Protection Plan must  
333               identify:

334                       **(i)** trees to be retained and removed;

- 335 (ii) the proposed limit of disturbance; existing and  
336 proposed utility connections;  
337 (iii) detailed drawings and measures to protect trees;  
338 and  
339 (iv) any other information or requirements specified by  
340 regulation or in the trees technical manual.

***Beginning on page 27, amend lines 684-690 to read:***

- 341 (C) The Planning Board may require a person who fails to  
342 file or does not comply with a Declaration of Intent to:  
343 (i) submit [[for]] to a Level 1 review; [[and]] or  
344 (ii) pay a penalty fee per square foot of forest cut or  
345 cleared [[established by fee schedules approved by  
346 Council resolution per square foot of forest cut or  
347 cleared, but in no case less than the minimum set  
348 by state law]].

***Beginning on page 28, amend lines 708-719 to read:***

- 349 (a) [General] Level 1 Review.  
350 (1) Natural Resource Inventory/Forest Stand Delineation. A  
351 person subject to a Level 1 review must submit to the Planning  
352 Director a Natural Resource Inventory/Forest Stand  
353 Delineation. Within 30 days after receiving the Natural  
354 Resource Inventory/Forest Stand Delineation, the Planning  
355 Director must notify the person whether the Natural Resource  
356 Inventory/Forest Stand Delineation is complete and approved.  
357 An incomplete or inaccurate application must be denied. If the  
358 Planning Director fails to act on the submission within 30 days,

359 the delineation will be treated as approved. The Planning  
 360 Director may extend the deadline for an additional 15 days for  
 361 extenuating circumstances. Approval may be revoked at any  
 362 time during the development review process if false or  
 363 misleading information was relied on the Natural Resource  
 364 Inventory/Forest Stand Delineation approval.

***Beginning on page 36, amend lines 923-939 to read:***

365 (b) Level 2 Review.

366 (1) Tree Inventory. A person subject to a Level 2 review must  
 367 submit to the Planning Director the Tree Inventory with a  
 368 Declaration of Intent. Within 30 days after receiving the Tree  
 369 Inventory and Declaration of Intent, the Planning Director must  
 370 notify the person whether the Tree Inventory is complete and  
 371 approved. An incomplete or inaccurate application must be  
 372 denied. If the Planning Director fails to act on the submission  
 373 within 30 days, the Tree Inventory will be treated as approved.  
 374 The Planning Director may extend the deadline for an  
 375 additional 15 days for extenuating circumstances. Approval  
 376 may be revoked at any time during the development review  
 377 process if false or misleading information was relied upon for  
 378 the Tree Inventory approval.

379 (2) Tree Protection Plan. After a person is notified that the Tree  
 380 Inventory is approved, a person must submit a Tree Protection  
 381 Plan to the Planning Board or Planning Director. The Tree  
 382 Protection Plan must be considered in conjunction with any  
 383 application to which it is a necessary component. Within 45

384 days after the Planning Director receives the Three Protection  
 385 Plan, the Planning Director must notify the applicant whether  
 386 the Tree Protection Plan is complete and approved. An  
 387 incomplete or inaccurate Tree Protection Plan must be denied.  
 388 If the applicant is not notified within 45 days, the Plan will be  
 389 treated as approved. The Planning Director may extend the  
 390 deadline for an additional 15 days for extenuating  
 391 circumstances.

392 (c) Level 3 Review. A person subject to a Level 3 review must submit to  
 393 the Planning Director a Declaration of Intent. Within 30 days after  
 394 receiving the Declaration of Intent, the Planning Director must notify  
 395 the person whether the Declaration of Intent is complete and  
 396 approved. An incomplete or inaccurate application must be denied. If  
 397 the Planning Director fails to act on the submission within 30 days,  
 398 the Declaration of Intent will be treated as approved. The Planning  
 399 Director may extend the deadline for an additional 15 days for  
 400 extenuating circumstances.

*Beginning on page 37, amend lines 942-965 to read:*

401 (a) [Table.] General. The Forest Conservation Plan must[[, to the  
 402 maximum extent feasible,]] retain certain vegetation and specific  
 403 areas in an undisturbed condition, unless the Planning Board or the  
 404 Planning Director finds retention is not feasible without undesirable  
 405 alterations to the proposal. The Forest Conservation Plan must  
 406 mitigate for the loss of forest and trees in the following order of  
 407 preference:  
 408 (1) on site reforestation or afforestation;

- 409 (2) offsite forest planting within the same watershed;
- 410 (3) on site non-native and invasive species management control
- 411 with supplemental planting;
- 412 (4) on site landscaping with an approved plan;
- 413 ~~[(4)]~~ (5) forest mitigation banks; and
- 414 ~~[(5)]~~ (6) in-lieu fee[; and].
- 415 ~~[(6) on site landscaping with an approved plan.]~~
- 416 (b) How to Calculate the Requirements.
- 417 (1) Table.

<i><b>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews</b></i>		
<i>Land Use [Category] Type<sup>[1]</sup></i>	<i>[Forest] Conservation Threshold</i>	<i>[Required] Afforestation Threshold</i>
Agricultural and Resource Areas	50%	20%
<u>Low Density Residential Areas</u>	<u>40%</u>	<u>20%</u>
Medium Density Residential Areas	[25%] <u>30%</u>	[20%] <del>[[25%]]</del> <u>20%</u>
<del>[[Institutional Development Areas</del>	[20%] <u>25%</u>	[15%] <u>20%</u> ]]
High Density Residential Areas	[20%] <u>25%</u>	[15%] <u>20%</u>
Mixed-use Development Areas	[15-20% <sup>2</sup> ] <u>20-25%<sup>1</sup></u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% <sup>2</sup> ] <u>20-25%<sup>1</sup></u>	[15%] <u>20%</u>
Commercial and Industrial Areas	[15] <u>20%</u>	[15%] <u>20%</u>

<u>Highway Right-of-Ways and School Sites<sup>2</sup></u>	<u>N/A</u>	<u>N/A</u>
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418

419 <sup>1</sup> The residential and institutional portions of the tract must meet the [20%] 25%

420 requirement. All other uses must meet the 20% requirements. [If a planned unit

421 development was initially approved before January 1, 1992, and is between

422 25% and 75% complete on July 1, 1992, (as measured by the total acreage

423 subject to the planned unit development that has received site plan approval),

424 the forest conservation threshold is calculated at 15 per cent. If the planned unit

425 development is less than 25% complete, the forest conservation threshold is

426 calculated using the adjustment shown in the chart.]

427 <sup>2</sup> Highway right-of-way and school site mitigation requirements are specified in

428 22A-9 and 22A-9A.

***Beginning on page 39, amend lines 987-998 to read:***

429 [(c)] (2) Reforestation. The forest conservation plan must provide for

430 reforestation as follows:

431 [(1)] (A) For all existing forest cover measured to the nearest

432 1/10 acre cleared on the net tract area below the

433 applicable forest conservation threshold, the area of

434 forest removed must be reforested at a ratio of 2 acres

435 planted for every one acre removed.

436 [(2)] (B) For all existing forest cover measured to the nearest

437 1/10 acre cleared on the net tract area above the

438 applicable forest conservation threshold, the area of

439 forest removed must be reforested at a ratio of [[1/4]] 1/2

440 acre planted for every one acre removed.

***Beginning on page 40, amend lines 1011-1027 to read:***

- 441            [(d)] (3) *Afforestation.*
- 442                    [(1)] (A) A site with less than 20 percent of the net tract area in
- 443                            forest cover must be afforested in accordance with the
- 444                            required afforestation percentages shown on the table in
- 445                            subsection [(a)] (b)(1) of this Section.
- 446                    [(2)] (B) Afforestation [should] must be accomplished by the
- 447                            planting, maintenance, and establishment of forest
- 448                            cover[. However, if the applicant] unless a person
- 449                            demonstrates to the satisfaction of the Planning Board or
- 450                            Planning Director, as the case may be[, that afforestation
- 451                            using forest cover is inappropriate]. Afforestation
- 452                            requirements may be satisfied by tree cover for a site
- 453                            because of its location in an urban setting, redevelopment
- 454                            context, high-density residential, commercial, industrial,
- 455                            planned unit development, or institutional area (as
- 456                            defined in Section 22A-3), or similar reason[[,
- 457                            afforestation requirements may be satisfied by tree
- 458                            cover]].

***Beginning on page 42, amend lines 1063-1073 to read:***

- 459                    (2) *Off-site afforestation and reforestation.* In addition to the use
- 460                            of other sites proposed by an applicant and approved by the
- 461                            County, off-site afforestation or reforestation may also include:
- 462                            (A) Forest mitigation banks designated in advance by the
- 463                            County.

464 (B) Protection of existing off-site forest. Acquisition of an  
465 off-site protective easement for existing forested areas  
466 not currently protected is an acceptable mitigation  
467 technique instead of off-site afforestation or reforestation  
468 planting, but the forest cover protected must be ~~[[2]]~~ 4  
469 times the afforestation and reforestation requirements.

***Beginning on page 45, add after line 1155 and amend line 1156 to read:***

470 (f) Non-native and invasive species management control with  
471 supplemental planting. Ratio of 1 acre planting requirement can be  
472 satisfied by 2 acres of non-native and invasive species management  
473 control with supplemental planting.

474 ~~[(g)]~~ ~~[[f)]~~ (g) *In lieu fee.*

***Beginning on page 46, amend lines 1180-1189 to read:***

475 ~~[(h)]~~ ~~[[g)]~~ (h) Agreements and Long-Term Protection.

476 (1) Maintenance agreement. A forest conservation plan must  
477 include a [two] 5-year binding agreement for maintenance of  
478 conservation areas, including the watering ~~[[as practical)]~~,  
479 feeding, [and ] replanting of areas to be afforested or reforested,  
480 and non-native and invasive management. The [2-year] 5-year  
481 period starts upon satisfactory final inspection of the  
482 conservation measures required under the [forest conservation  
483 plan] Forest Conservation Plan. A staged project may have  
484 more than one agreement.

***Beginning on page 47, amend line 1191 to read:***

485 ~~[(i)]~~ ~~[[h)]~~ (i) Financial Security.

***Beginning on page 48, amend lines 1226-1232 to read:***

- 486           (6) Events of forfeiture. The financial security instrument may be  
487           subject to forfeiture on:
- 488           (A) failure of the obligee to perform the work under the  
489           [forest conservation plan] Forest Conservation or Tree  
490           Protection Plan in accordance with the required schedule;  
491           or  
492           (B) failure of the obligee to pay a required in lieu fee in a  
493           timely manner.

***Beginning on page 49, amend lines 1238-1274 to read:***

- 494           **(b) A person can create a forest mitigation bank by permanently**  
495           **protecting:**
- 496           (1) existing forest;
- 497           (2) planting and protecting new forests on open land in  
498           [[unplanted]] environmental buffers or in areas contiguous to  
499           existing and protected forests; or
- 500           (3) a combination of the two.
- 501           [[b)] (c) The area of land where the bank is [[planted]] existing forest must  
502           be at least 1 acre.
- 503           (d) The area of land where planting in an unplanted environmental buffer  
504           or in areas contiguous to existing and protected forests must be at  
505           least 10,000 square feet.
- 506           [[c)] [[d)] (e) A forest mitigation bank must use native plants for  
507           afforestation and reforestation[, unless inappropriate].

508 [(d)] ~~[(e)]~~ (f) A person proposing to create a forest mitigation bank must  
 509 submit a plan to the Planning Director, [which must include] that  
 510 includes:

- 511 (1) a [2-year] 5-year maintenance agreement which meets the  
 512 standards in subsection [22A-12(h)(1)] 22A-12(g)(1);
- 513 (2) all information required by subsection [22A-10(c)]  
 514 22A-10(b)(2) for a [forest conservation plan] Forest  
 515 Conservation Plan; and
- 516 (3) the draft easement, covenants, or deed restrictions for the area  
 517 to be sold to the developer when credits are withdrawn from the  
 518 bank.

519 (g) Within 45 days after the Planning Director receives a proposed Forest  
 520 Mitigation Bank Plan, the Planning Director must notify the applicant  
 521 whether the Forest mitigation Bank Plan is complete and approved.  
 522 An incomplete or inaccurate Forest Mitigation Bank Plan must be  
 523 denied. If the applicant is not notified within 45 days, the Plan will be  
 524 treated as approved. The Planning Director may extend the deadline  
 525 for an additional 15 days for extenuating circumstances.

526 [(e)] ~~[(f)]~~ (h) Forest mitigation banks must be established in accordance  
 527 with the priority areas described in subsection [22A-12(e)(3)] 22A-  
 528 12(b)(2), or in areas identified in a master plan or functional plan.

529 (i) A forest mitigation bank must only be established on land in private  
 530 ownership.

531 [(f)] ~~[(g)]~~ (i) Credits must not be debited from a forest mitigation bank  
 532 until all trees have been planted and accepted by the Planning  
 533 Director, and either financial security which meets the standards in

534 subsection [22A-12(i)] 22A-12(h) has been provided or the Planning  
 535 Director has found that a sufficient number of trees have successfully  
 536 survived for [2] 5 years after planting.

537 ~~[(g)]~~ ~~[[h)]~~ (k) To debit credits from an approved forest mitigation bank, the  
 538 easement, covenants, or deed restrictions which assure that the newly  
 539 reforested or afforested area of land remains a forest in perpetuity  
 540 must be conveyed to the Planning Board or its assignee and the  
 541 applicant must show that credits are available and the applicant has  
 542 the right to debit them. The credits must buy an amount of land equal  
 543 to the applicant's off-site reforestation or afforestation requirements  
 544 under its approved forest conservation plan.

***Beginning on page 52, add after line 1338 to read:***

545 (f) Any person subject to Level 1, Level 2, or Level 3 approval under this  
 546 Chapter must notify the Planning Director and the property owner and  
 547 resident of any adjoining or confronting property in writing at least 10  
 548 days before performing any cutting, clearing, or grading. Failing to  
 549 notify the Planning Director, any property owner, or resident entitled  
 550 to this notice as required by this Section is a violation of this Chapter.

***Beginning on page 53, add after line 1350 to read:***

551 (a) *Class A violation.* Violation of this Chapter or any regulations adopted  
 552 under it is a Class A civil or criminal violation. Notwithstanding  
 553 Section 1-19, the maximum civil fine is \$1,000. Each day a violation  
 554 continues is a separate violation under this Chapter.

555 (b) *Enforcement authority.* The Maryland-National Capital Park and  
 556 Planning Commission has primary enforcement authority under this  
 557 Chapter. ~~[[Administrative]]~~ The Planning Director may initiate

558 administrative enforcement actions ~~[[are to be initiated by the~~  
 559 ~~Planning Director in accordance with]]~~ under this Article.

560 (c) *Civil and criminal actions.* The Commission may bring any civil or  
 561 criminal action that the County may bring under Sections 1-18, 1-19,  
 562 and 1-20 to enforce this Chapter or any regulation adopted under it.  
 563 The Commission may also bring a civil action to enforce a forest  
 564 conservation plan and any associated agreements and restrictions or to  
 565 enforce an administrative order. These remedies are in addition to:

566 (1) any remedy that the Commission or County may initiate under  
 567 state or County law to enforce the terms of a regulatory  
 568 approval which incorporates a forest conservation plan; and

569 (2) any private civil remedy available under subsection (d).

570 (d) Private civil action.

571 (1) An aggrieved person may file civil action in any court with  
 572 jurisdiction to enforce this Chapter or any forest conservation  
 573 plan, administrative order, or other regulatory approval under it.  
 574 An aggrieved person includes any Montgomery County resident  
 575 or organization.

576 (2) In an action filed under this subsection, the Court may  
 577 temporarily or permanently enjoin any violation or imminent  
 578 violation of County law, order any person to correct any  
 579 violation of County law, award damages to any person entitled  
 580 to them by law, remand the matter to the Planning Board of any  
 581 necessary action under this Chapter, or order any other  
 582 appropriate remedy.

583 (3) In an action filed under this subsection, an aggrieved person  
584 may challenge the factual basis of any order or decision by the  
585 Planning Director or the Planning Board if the person shows  
586 that the order or decision was:

587 (A) based on materially false, misleading, inaccurate, or  
588 incomplete information; or

589 (B) taken without proper notice to any person who was  
590 entitled to notice under this Chapter.

591 ~~[(d)]~~ (e) *Administrative civil penalty.*

592 \* \* \*

593 ~~[(e)]~~ (f) *Fund.* Money collected under this Section must be deposited into  
594 the ~~[[forest conservation fund]]~~ Forest Conservation Fund.

***Beginning on page 56, amend lines 1432-1439 to read:***

595 (a) Natural Resource Inventory/Forest Stand Delineations, Tree  
596 Inventories, and Forest Conservation or Tree Protection Plans  
597 approved by the Planning Director.

598 (1) Appeal to Planning Board. An applicant has 30 days from the  
599 date of the Planning Director's written decision on a Natural  
600 Resource Inventory/Forest Stand Delineation, Tree Inventory,  
601 or Forest Conservation or Tree Protection Plan to appeal to the  
602 Planning Board.

***Beginning on page 57, add after line 1462 and amend lines 1463-1494 to read:***

603 (c) Application requirements for public notice. An applicant for a  
604 variance must post their request for 20 days on the Department of  
605 Permitting Services style permit board according to the Department's  
606 regulations.

607        ~~[(c)]~~ (d) Referral to other agencies. Before considering a variance, the  
 608        Planning Board must refer a copy of each request to the County  
 609        ~~[[Arborist]]~~ Forest Conservation Coordinator, Planning [Department]  
 610        Director, and other appropriate officials or agencies for a written  
 611        recommendation before acting on the request. Recommendations must  
 612        be submitted to the Planning Board within 30 days from the receipt  
 613        [by the official or agency] of the [request] referral or the  
 614        recommendation [should] must be presumed to be favorable.

615        (e) Public Comment. Before considering a variance, the Planning Board  
 616        must accept written comment from the public submitted within 30  
 617        days of the posting of the variance request, as required by subsection  
 618        (c).

619        ~~[(d)]~~ (f) Minimum criteria. A variance may only be granted if it meets the  
 620        provisions of subsection (a) and (b) above. A variance must not be  
 621        granted if granting the request:

- 622        (1)    [will] Will confer on the applicant a special privilege that would  
 623        be denied to other applicants;
- 624        (2)    [is] Is based on conditions or circumstances which are the result  
 625        of the actions by the applicant;
- 626        (3)    [arises] Arises from a condition relating to land or building use,  
 627        either permitted or nonconforming, on a neighboring property;  
 628        or
- 629        (4)    [will] Will violate State water quality standards or cause  
 630        measurable degradation in water quality.

631        ~~[(e)]~~ (g) Approval procedures; Conditions. The Planning Board[, or the  
 632        District Council on a development plan,] must [make findings] find

633 that the applicant has met all requirements of this Section before  
 634 granting a variance. Appropriate conditions may be imposed to  
 635 promote the objectives of this Chapter and protect the public interest.

636 ~~[[f]]~~ (h) *Notice to State Department of Natural Resources; Right to initiate*  
 637 *or intervene in proceedings.*

638 (1) Notice of a pending variance request must be given to the  
 639 Department of Natural Resources within 15 days of receipt of a  
 640 request for a variance.

641 (2) The Department of Natural Resources may initiate or intervene  
 642 in an administrative, judicial or other original proceeding or  
 643 appeal in the State concerning an approval of a variance.

***Beginning on page 61, amend lines 1565-1586 to read:***

644 There is a County forest conservation fund. Money deposited into the [fund]  
 645 Fund must be used in accordance with the adopted County budget and in  
 646 accordance with the following:

647 (a) *In lieu fees.* Money deposited in the [forest conservation fund] Forest  
 648 Conservation Fund [instead of planting] must be spent on the  
 649 reforestation and afforestation for which the money is deposited  
 650 within 2 years, including costs directly related to site identification,  
 651 acquisition, design, and preparation, and must not revert to the  
 652 [general fund] General Fund. The permanent preservation of priority  
 653 forests, including identification and acquisition of a site, may be  
 654 substituted for reforestation and afforestation at a rate of ~~[[2]]~~ 4 acres  
 655 of forest preservation for each acre of planting required. Funds  
 656 remaining after all reforestation and afforestation requirements are  
 657 satisfied ~~[[may]]~~ must be spent on any other tree conservation activity,

658 including purchase of credits from forest mitigation banks or street  
659 tree planting.

660 (b) *Penalties.* Money collected for noncompliance with a [forest  
661 conservation plan] Forest Conservation Plan, Tree Protection Plan, or  
662 the associated [2-year] 5-year maintenance agreement must be  
663 deposited in a separate account in the [forest conservation fund]  
664 Forest Conservation Fund and must not revert to the [general fund]  
665 General Fund. Money deposited in this [fund] Fund may be used to  
666 administer this Chapter or any purpose set forth in the fund.

*Beginning on page 62, amend line 1588 to read:*

667 [22A-30. County Arborist.] [[Reserved.]]

*Beginning on page 63, add after line 1614 to read:*

668 Article 5. County Forest Conservation Coordinator.

669 22A-30. County Forest Conservation Coordinator.

670 (a) Appointment. The Director of Environmental Protection must  
671 designate an employee of the Department to serve as County Forest  
672 Conservation Coordinator.

673 (b) Qualifications. The County Forest Conservation Coordinator must  
674 have relevant experience and an advanced degree in horticulture,  
675 forestry, forest ecology, plant pathology, landscape architecture, or  
676 another related field, or an equivalent combination of education and  
677 experience. The County Forest Conservation Coordinator must be  
678 licensed as a tree expert under State law.

679 (c) Duties. The County Forest Conservation Coordinator has the  
680 following functions related to resource management and protection of  
681 forest and trees in the County:

- 682           (1) Develop a comprehensive County conservation and  
683           management strategy, including programs designed to promote  
684           afforestation and reforestation in the County and the survival of  
685           historic trees and any endangered tree species;
- 686           (2) Advise the Executive and Council on the effectiveness of  
687           County programs to control tree pests and diseases;
- 688           (3) Review and approve proposed commercial logging or timber  
689           harvesting operations under Article 2;
- 690           (4) Review variance requests and reports under Article 2;
- 691           (5) Identify and prioritize offsite forest planting and forest retention  
692           areas for County projects under this Chapter;
- 693           (6) Provide liaison with citizens and businesses on forest and tree  
694           conservation issues and develop appropriate mechanisms for  
695           public input on conservation strategies; and
- 696           (7) Any other duty required by law or assigned by the Executive.

*Beginning on page 65, add after line 1683 to read:*

697           Sec. 2. Effective Date. This Act takes effect on July 1, 2008. Any  
698           Development Plan filed on or before June 30, 2008 is not subject to any  
699           amendment to Chapter 22A made by Section 1.