

Bill No. 37-07
Concerning: Forest Conservation-
Amendments
Revised: 10/19/07 Draft No. 2
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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

Boldface	<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 to:

- 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

27 [(5)] (6) provide a focused and coordinated approach for County
28 forest conservation activities.

29 **22A-3. Definitions.**

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

31 * * *
32 Afforestation threshold means a specific percentage of a tract which is used
33 to determine the afforestation requirements.

34 * * *
35 Applicant means a person who submits a natural resource inventory/forest
36 stand delineation, forest conservation plan, tree inventory, or tree protection
37 plan to the Planning Director.

38 Certified arborist means a person with the technical competence to provide
39 for or supervise the management and protection of trees and other woody
40 plants in residential, commercial, and public landscapes. For purposes of
41 this Chapter, a person can gain technical competence through experience and
42 related training provided by a professional organization or a program of
43 professional education.

44 Champion tree means the largest tree of its species in the County, [as
45 designated by the] as identified in the County Forest Conservancy District
46 [Board] Board's Champion Tree Register [or its designee].

47 * * *
48 Declaration of [intent] Intent means a signed and notarized statement by a
49 landowner that the cutting of trees on the landowner's property:

- 50 (1) is [for purposes exempted under this Chapter; and] to comply with
51 Sections 22A-10(b)-(c);
52 (2) no activity requiring a Forest Conservation Plan will occur on site
53 within 7 years after the proposed activity is completed; 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.

79 * * *

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^[1]</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% ²] <u>20-25%¹</u>	[15%] <u>20%</u>
Planned unit Development Areas	[15-20% ²] <u>20-25%¹</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 ¼ 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, stabilized 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

1688 *This is a correct copy of Council action.*

1689

Linda M. Lauer, Clerk of the Council

Date

1690