

**MEMORANDUM**

January 8, 2021

TO: Transportation and Environment Committee

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Expedited Bill 36-20, Forest Conservation - Amendments <sup>1</sup>

PURPOSE: Worksession – Committee to make recommendations on bill

**Expected Attendees**

Kristin Taddei, Forest Conservation Planning Coordinator, Planning Department

Mark Pfefferle, Division Chief, Planning Department

Christina Sorrento, Associate General Counsel, Maryland-National Capital Park and  
Planning Commission

Laura Miller, Forest Conservation Coordinator, Department of Environmental Protection

Frank Dawson, Chief, Division of Watershed Management Capital Projects, Department  
of Environmental Protection

Tim Cupples, Chief, Division of Transportation Engineering, Department of  
Transportation

Expedited Bill 36-20, Forest Conservation - Amendments, sponsored by Lead Sponsor Council President at the request of the Planning Board, was introduced on July 29. A public hearing was held on September 22.

The bill would:

- (1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- (2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
- (3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
- (4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;

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<sup>1</sup>#ForestConservation

- (5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- (6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- (7) provide that an exemption granted expires after 5 years if development has not begun;
- (8) increase the length of the binding maintenance agreement required in forest conservation plans; and
- (9) alter the variance process.

The Planning Board also transmitted proposed regulations to implement Bill 36-20.

## **BACKGROUND**

After extensive study and review, the Planning Department has recommended revisions to Chapter 22A (Forest Conservation Law) of the County Code in order to align the County's law with amendments to the state enabling legislation, Sections 5-1601 – 5-1613 of the Natural Resources Article of the Maryland Code. The amendments to state law took effect on October 1, 2019.

In addition to revising Chapter 22A consistent with state law, Bill 36-20 would make various clarifications and updates to Chapter 22A.

## **PUBLIC HEARING SUMMARY**

At a public hearing on September 22, 2020, several speakers testified regarding Expedited Bill 36-20. Speakers included the Planning Department, environmental advocates, individuals, and the building industry. Environmental organizations requested amendments to the bill to: (1) achieve net zero forest loss; (2) expand protections for priority forests; and (3) expand the definition of ephemeral streams.

Subsequent to the public hearing, Planning staff identified several additional amendments (described below under Item #4) required to align Chapter 22A with state enabling legislation. In addition, the County's Department of Transportation (DOT) and Department of Environmental Protection (DEP) have consulted with the Planning Department and Council staff regarding several additional potential amendments (described below under Items #5 – 10, below).

## **ISSUES FOR COMMITTEE'S CONSIDERATION**

### **1. Net Zero Forest Loss**

Several environmental organizations, including the Audubon Naturalist Society, have encouraged the Council to either: (1) amend Bill 36-20 to "have a net zero forest loss by following a 1:1 replanting ratio"; or (2) "soon study and introduce a new [bill] focusing on this critically important and forward-looking issue." (©91-93). As a model, organizations have pointed to Frederick County, which amended both its forest conservation law *and* its zoning code in support of a net zero policy.

The Committee might wish to ask Planning Department staff to comment upon potential amendments to achieve a net-zero forest loss. Planning staff previously commented that Montgomery County has considerations distinct from other jurisdictions, and that not all forest loss in the County is regulated through the Forest Conservation Law.

If the Committee wishes to consider the net zero forest loss request, amendments to various sections of the Code would be required. Therefore, **Council staff suggests** that the Committee might wish to recommend enactment of Bill 36-20 – which is required in order to bring the County law into alignment with state law – and to consider a 1:1 replanting requirement as a separate matter in consultation with Executive department staff and affected stakeholders.

If the Committee wishes immediately to require a 1:1 replanting ratio, even though – standing alone – the ratio would not achieve net zero forest loss, the Committee could adopt the following amendment.

*After line 223, insert the following.*

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

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

(2) Except as provided in paragraph (3), ~~[[For]]~~ for all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

(3) The plan must require, at a minimum, a 1:1 replacement. This means that for each one acre (measured to the nearest 1/10 acre) of forest cleared on the net tract area, one acre must be planted.

~~[[3]]~~ (4) Each acre of forest retained on the net tract area above the applicable forest conservation threshold must be credited against the total number of acres required to be reforested.

\* \* \*

## **2. Priority Forests**

Under current County law, as well as under the bill, an exemption is available for a stream restoration project for which the applicant for a sediment control permit has met certain conditions, including: (1) replacing removed trees; (2) confirming that the tract is not included in a previously approved forest conservation plan; and (3) executing a binding maintenance agreement for planting and maintenance of mitigation trees for at least 5 years. *See* lines 129-143.

This current exception is consistent with state law, which exempts from the forest conservation law “[a]ny stream restoration project for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner.” Md. Code Ann., Natural Resources § 5-1602.

Environmental organizations have recommended altering the County’s exemption to provide greater protection to priority forests. Under state law, the County is permitted to make its local plan more stringent than the state plan. Along these lines, the Committee might wish to consider the following amendment.

*Amend lines 134-135 as follows.*

[(3)] (2) confirmed that the tract is not included in a previously approved forest conservation plan and is not included in a priority forest conservation area as specified in the Planning Board’s Environmental Guidelines; and....

The Committee may wish to ask the Planning Department about the implications and advisability of such an amendment.

### **3. Definition of Ephemeral Streams**

Environmental groups have recommended expanding the definition of the term “ephemeral stream,” which is not currently defined in Code. The purpose of the definition would be to extend protections for ephemeral streams beyond Ten Mile Creek. A specific definition has not been proposed.

The Committee may wish to ask the Planning Department whether the term should be defined in Code. Currently, the Forest Conservation Law simply refers to the definition of ephemeral streams in the *Guidelines for Environmental Management of Development in Montgomery County (Environmental Guidelines)*. Planning staff has suggested that the definition would need to be changed in the *Environmental Guidelines*, rather than in Code.

### **4. Amendments Recommended by Planning Staff**

Subsequent to the public hearing, the Planning Board received information from the Maryland Department of Natural Resources (DNR) that certain provisions of the bill are not compatible with state law. In particular, Planning Board staff, based on DNR input, recommends *deleting from the bill the following lines related to commercial logging and timber harvesting:*

*Lines 49-65; and*

*Lines 167-171.*

Planning staff also has proposed the following amendment, which would allow the term of a certain exemption to match the term of a subdivision validity period if the validity period exceeds 5 years.

*Amend lines 164-166 to read as follows.*

- (b) Exemption expiration. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of approval is expired, unless the confirmed exemption pertains to a subdivision with a validity period of more than 5 years. If the subdivision has a validity period of more than 5 years, the confirmed exemption does not expire until the end of the subdivision validity period.

Planning staff have recommended the following additional clarifying amendments.

*Amend lines 256-259 to read as follows.*

- (2) the off-site reforestation and afforestation requirements are less than 0.5 acre and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available.

*Amend lines 293-307 as follows.*

- (1) *Maintenance agreement.* A forest conservation plan must include a [2] 5- year binding agreement for maintenance of conservation areas. A person subject to the binding agreement may request that the binding agreement be reduced to 3 years if the forest conservation inspector finds that the agreement has been fulfilled, unless the forest conservation plan is within a special protection area. If the forest conservation plan is within a special protection area, the binding maintenance agreement must be for a minimum of 5 years and may not be reduced.....

*Amend lines 317-331 as follows.*

- (2) *Preferred form.* The preferred financial security instruments are an irrevocable letter of credit or a cash bond for a minimum of 5 years that may be reduced to 3 years upon request by the person subject to the binding maintenance agreement if the forest conservation inspector finds that the binding maintenance agreement has been fulfilled, unless the forest

conservation plan is within a special protection area. If the forest conservation plan is within a special protection area, the financial security must be for a minimum of 5 years and may not be reduced....

**5. Exemption of Certain Stream Restoration Projects from Forest Conservation Plan Requirements**

Section 22A-5 of the forest conservation law exempts certain types of activities from the requirement to obtain approval of a forest conservation plan. One of the exemptions is for “a stream restoration project for which the applicant for a sediment control permit has” – among other things – “entered into a binding maintenance agreement of at least 5 years with the affected property owner or owners”. The bill, as drafted, would add that the maintenance agreement could be between the applicant and: (1) the owner or owners; or (2) the Maryland-National Capital Park and Planning Commission if the applicant is performing a stream restoration project on their own property.

The Department of Transportation (DOT) and Department of Environmental Protection (DEP) have asked that County departments not be required to enter into agreements with the M-NCPPC in order to receive the exemption when the affected property is County-owned.

In response, Planning Department staff have expressed concern that the exemption requested by DOT and DEP would be less stringent than state law and, therefore, impermissible. Planning staff recommend against the amendment unless and until the State Department of Natural Resources agrees that the exemption is permissible. Planning staff also points out that M-NCPPC has entered into similar agreements with other County agencies.

**6. Definition of Significant Tree**

DOT and DEP have recommended that the bill should include a definition of “significant tree”. In response, Planning staff has suggested the following definition:

Significant tree means a tree of any species that is 24 inches or greater in diameter at 4.5 feet above the ground.

**7. Transition Period for Pending County Projects**

DOT and DEP have requested a transition period in which certain pending projects are exempt from amendments to the Forest Conservation Law. In response, Planning staff has recommended adopting a transition clause. Council staff recommends the following uncodified language:

Transition. The amendments under this Act must not apply to any county highway project if, prior to the effective date of the Act, construction funding has been appropriated for the project, and the project has been submitted to the Planning Board under mandatory referral.

**8. Length of Forest Stand Delineation Approval**

DOT and DEP have raised the concern that the 2-year time period for the approval of a forest stand delineation is too short given the length of time needed to acquire necessary permits from multiple government agencies. To ameliorate the concern, Planning staff have suggested the following amendment to Section 22A-10(b)(4):

An approved forest stand delineation is not valid after 2 years unless:

- (A) a forest conservation plan or a plan under Section 22A-9 has been accepted as complete; or
- (B) the delineation has been recertified by the preparer.

**9. Referrals of Variances to the County Arborist**

DOT and DEP have stated that they “would like to maintain the option for the Planning Board to refer any variance to the County Arborist.” To accomplish this goal under the language of the bill, the Committee could adopt the following amendments to lines 464-471.

(c) *Referral to other agencies* [[for non 22A-12(b)(3) variance requests]].

- (1) [[Before the Planning Board considers a variance, not related to 22A-12(b)(3), the]] The Planning Director must send a copy of each variance request related to Section 22A-12(b)(3)(A) or (B) to the County Arborist and any other appropriate agency for a written recommendation[.] before the Board acts on the request.
- (2) The Planning Director may send a copy of each variance request related to Section 22A-12(b)(3)(C) to the County Arborist and any other appropriate agency for a written recommendation before the Board acts on the request.

If the Committee accepts these amendments, Planning staff have requested the following additional amendment to shorten the referral period.

- (3) If a recommendation on the variance is not submitted to the Planning Board, or Planning Director, as appropriate, within ~~[[30]] 10~~ days after the referral, the recommendation must be presumed to be favorable.

**10. Forest Conservation Advisory Committee - Membership**

DEP and the Forest Conservation Advisory Committee have requested the following alterations to the membership and frequency of meetings of the Forest Conservation Advisory Committee.

Sec. 22A-31. Forest Conservation Advisory Committee

\* \* \*

(c) Composition and terms of members.

(1) The Committee has [16] 9 public members. The public members should include:

- (A) landscape architects;
- (B) arborists and urban foresters;
- (C) horticulturists and representatives from the nursery industry;
- (D) persons directly engaged in agriculture;
- (E) persons directly involved in the building industry;
- (F) members of citizen groups;
- (G) members of environmental and conservation organizations;
- (H) representatives of public utility companies; and
- (I) persons who own a forest stand of at least 2 acres.

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

- (A) [Economic Development] Agricultural Services;
- (B) Environmental Protection;
- (C) Transportation; and
- (D) Permitting Services.

\* \* \*

(d) Voting, officers, meetings, and compensation.

\* \* \*

(3) The Committee meets at the call of the Chair. The Committee must meet as often as necessary to perform its duties, but not less than [9] 6 times each year.

\* \* \*

**STAFF RECOMMENDATION:** Staff recommends adopting the amendments described above under Items #4, #6, #7, #8, #9, and #10.

**NEXT STEPS.** Committee to recommend whether to enact Expedited Bill 36-20, including any amendments supported by the Committee.

This packet contains:	<u>Circle #</u>
Expedited Bill 36-20	1
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Expedited Bill No. 36-20  
Concerning: Forest Conservation –  
Amendments  
Revised: 6/30/2020 Draft No. 2  
Introduced: July 29, 2020  
Expires: January 29, 2022  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the Planning Board

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**AN EXPEDITED ACT** to:

- (1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- (2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law
- (3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
- (4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
- (5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- (6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- (7) provide that an exemption granted expires after 5 years if development has not begun;
- (8) increase the length of the binding maintenance agreement required in forest conservation plans;
- (9) alter the variance process; and
- (10) generally amend the Forest Conservation Law.

By amending

Montgomery County Code

Chapter 22A, Forest Conservation – Trees

Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-12, 22A-13, 22A-15, 22A-17, 22A-21, 22A-27, and 22A-30

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>

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



- 28 (e) highway construction not exempt under subsections 22A-5 (e) or (p);
- 29 [and]
- 30 (f) a public utility not exempt under subsections 22A-5 (g), (o)(1) and (2),
- 31 or (p)[.]; and
- 32 (g) Clearing or grading conducted on two or more platted contiguous lots
- 33 that collectively total 40,000 square feet or larger that are graded at
- 34 the same time and where sediment control is required.

\* \* \*

36 **22A-5. Exemptions.**

37 The requirements of Article II do not apply to:

38 \* \* \*

- 39 (b) an agricultural activity if:
- 40 (1) [that is] the activity is exempt from the [both platting
- 41 requirements under Section 50-3 and] requirements to obtain a
- 42 sediment control permit under Section 19-2(b)(2);
- 43 (2) the activity is subject to a declaration of intent filed with the
- 44 Planning Director stating that the agricultural areas will remain
- 45 in commercial agriculture; and
- 46 (3) [Agricultural] agricultural support buildings and related
- 47 activities are built using best management practices;

48 \* \* \*

- 49 (d) (1) a commercial logging and timber harvesting operation, including
- 50 any harvesting conducted under the forest conservation and
- 51 management program under Section 8-211 of the Tax-Property
- 52 Article of the Maryland Code that:
- 53 (A) is completed before July 1, 1991, or is completed on or
- 54 after July 1, 1991, and the property on which the cutting

55 or clearing is conducted is not the subject of an application  
56 for development within 5 years after the sediment control  
57 permit has been issued;

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

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

65 (D) complies with the provisions in 22A-6(c).

66 \* \* \*

67 (e) a State, [or] County, or municipal highway construction activity that is  
68 subject to Section 5-103 of the Natural Resources Article of the  
69 Maryland Code, or Section 22A-9. All requirements of an exemption  
70 for a County or municipal highway construction activity are detailed in  
71 Section 22A-6(d) and Section 22A-9;

72 \* \* \*

73 (n) any minor subdivision under Division 50.7 of Chapter 50 if:

74 (1) the only development located on the resulting lot is a single  
75 family dwelling unit or an accessory structure (such as a pool,  
76 tennis court, or shed)[;] and

77 [(2)] development does not result in the cutting, clearing, or grading  
78 of:

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

80 (B) any forest in a stream buffer,

- 81 (C) any forest on property located in a special protection area
- 82 which must submit a water quality plan,
- 83 (D) any specimen or champion tree, or
- 84 (E) any tree or forest that is subject to the requirements of a
- 85 previously approved forest conservation plan or tree save
- 86 plan; or

87 [(3)] (2) there is no proposed land disturbance and a declaration of  
 88 intent is filed with the Planning Director stating that the lot will  
 89 not be the subject of additional regulated activities under this  
 90 Chapter within 5 years of the approval of the minor subdivision.

91 \* \* \*

92 (r) an equestrian facility located in an agricultural zone that is  
 93 exempt from platting requirements under Section 50-9. Article II  
 94 does not apply to any equestrian support building or related  
 95 activity only if the building is built using best management  
 96 practices. However, Section [22A-6(b)] 22A-6(a) applies if any  
 97 specimen or champion tree would be cleared.

98 \* \* \*

99 (t) a modification to [an existing] a:

- 100 (1) non-residential developed property if:
  - 101 (A) no more than 5,000 square feet of forest is ever
  - 102 cleared at one time or cumulatively after an
  - 103 exemption is issued;
  - 104 (B) the modification does not result in the cutting,
  - 105 clearing, or grading of any forest in a stream buffer
  - 106 or located on property in a special protection area
  - 107 which must submit a water quality plan;

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

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

115 (E) the pending development application does not propose any  
116 residential uses; or

117 (2) residential developed property if:

118 (A) forest is not impacted or cleared;

119 (B) the modification is not located in a stream buffer;

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

123 (D) the modification does not increase the developed area by  
124 more than 50%;

125 (E) the existing structure is not modified; and

126 (F) the pending development application does not propose any  
127 new buildings or parking facilities.

128 \* \* \*

129 (v) a stream restoration project for which the applicant for a sediment  
130 control permit has:

131 [(2)] (1) agreed to replace every tree removed and plant the new trees  
132 before the end of the first planting season after final stabilization;  
133 and

134 [(3)] (2) confirmed that the tract is not included in a previously  
 135 approved forest conservation plan; and

136 (3) executed a binding maintenance agreement for planting and  
 137 maintenance of mitigation trees for at least 5 years with the  
 138 affected property owner or owners, or with the Maryland  
 139 National-Capital Park and Planning Commission if the applicant  
 140 is performing a stream restoration project on their own property.  
 141 If an applicant is performing a stream restoration project on their  
 142 own property, financial security is required as required under  
 143 Section 22A-12(i).

144 \* \* \*

145 **22A-6. [Exemptions-] Special provisions – Exemptions; tree save plans; and**  
 146 **highway projects.**

147 [(a) Special transition provision. An activity or development that is  
 148 exempted under Section 22A-5, but which requires site plan approval,  
 149 is subject to the local law applicable to tree conservation in effect before  
 150 July 1, 1992. However, a violation of the requirements of any tree save  
 151 plan or similar condition of approval may be enforced using any remedy  
 152 provided under this Chapter.]

153 [(b) Tree save plan provision.]

154 (a) Tree save plan requirements. An activity or development that would be  
 155 exempt under Section 22A-5 and will impact a significant, specimen,  
 156 or champion tree, [except that the proposed activity involves clearing  
 157 of a specimen or champion tree,] requires the approval of a tree save  
 158 plan, which may require tree preservation or mitigation for loss of  
 159 individual trees. The plan requirements must be based on the size and  
 160 character of the trees to be cleared. If trees to be cleared are part of an

161 existing scenic buffer between public parkland and a proposed  
162 development, trees which are smaller than specimen size may be  
163 included in the plan.

164 (b) Exemption expiration. A confirmed exemption that has not started any  
165 authorized land disturbance within 5 years from the date of approval is  
166 expired.

167 (c) Timber harvests. Any commercial logging or timber harvesting exempt  
168 from submitting a forest conservation plan must include provisions for  
169 the establishment of a new age class with sufficient replanting to meet  
170 the definition of forest with 100 stems per acre within 2 years after the  
171 overstory trees are removed.

172 (d) Tree save plan violations. A violation of any requirement of a tree save  
173 plan or similar condition of approval may be enforced using any remedy  
174 provided under this Chapter.

175 (e) Highway projects. The provisions of Article III apply to County and  
176 municipal highway projects exempt from Article II under 22A-5(e).

177 \* \* \*

178 **22A-9. County and Municipal Highway Projects.**

179 (a) *General*

180 (1) This [section] Section applies to construction of a highway by  
181 the County or a municipality as part of an approved Capital  
182 Improvements Program project.

183 \* \* \*

184 **22A-10. General.**

185 \* \* \*

186 (c) *Forest conservation plan.*

187 (1) A forest conservation plan is intended to govern conservation,  
 188 maintenance, and any afforestation or reforestation requirements  
 189 which apply to the site. A forest conservation plan must contain  
 190 information on the extent and characteristics of the trees and  
 191 forested area to be retained or planted, proposed locations for on-  
 192 site and off-site reforestation, scheduling, protective measures, a  
 193 binding maintenance agreement effective for at least [2] 5 years,  
 194 a binding agreement to protect forest conservation areas, and  
 195 other information or requirements specified in the regulations or  
 196 technical manual.

197 \* \* \*

198 **22A-11. Application, review, and approval procedures.**

199 (a) *General.*

200 \* \* \*

201 (3) Notice. Notice of forest conservation plan applications must be  
 202 provided as specified in regulation.

203 \* \* \*

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

205 \* \* \*

206 (2) *Forest conservation plan.* Upon notification that the forest stand  
 207 delineation is complete and correct, the applicant must submit to  
 208 the Planning Director a [preliminary] final forest conservation  
 209 plan. The Planning Board must consider the [preliminary] final  
 210 forest conservation plan when reviewing the mandatory referral  
 211 application or the park development plan. [The deadlines for  
 212 reviewing the final forest conservation plan are the same as in  
 213 paragraph (d)(2) of this Section.]

214

\* \* \*

215 **22A-12. Retention, afforestation, and reforestation requirements.**216 (a) *Table.*

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i>		
<i>Land Use Category</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</i>
Agricultural and resource areas	50%	20%
Medium-density residential areas	25%	20%
Institutional development areas	20%	15%
High-density residential areas	20%	15%
Mixed-use development areas	[15-]20% <sup>[* 1]</sup>	15%
Planned unit development areas	[15-]20% <sup>[* 1]</sup>	15%
Commercial and industrial use areas	15%	15%

217 [<sup>1</sup>The residential and institutional portions of the tract must meet the 20%  
218 requirement. If a planned unit development was initially approved before January 1,  
219 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the  
220 total acreage subject to the planned unit development that has received site plan  
221 approval), the forest conservation threshold is calculated at 15 per cent. If the

222 planned unit development is less than 25% complete, the forest conservation  
 223 threshold is calculated using the adjustment shown in the chart.]

224 \* \* \*

225 (e) *Standards for reforestation and afforestation.*

226 (1) (A) *Preferred sequence.* Except as provided in the technical  
 227 manual or otherwise in paragraph (1) of this subsection, the preferred  
 228 sequence for afforestation and reforestation is, in general: on-site  
 229 afforestation or reforestation[, including techniques which encourage  
 230 natural regeneration where feasible; landscaping with an approved  
 231 plan; and]; off-site afforestation or reforestation[, including techniques  
 232 which encourage natural regeneration where feasible]; enhancement of  
 233 existing forest through on-site selective clearing, supplemental  
 234 planting, or both; acquiring credit(s) from an off-site forest mitigation  
 235 bank; paying a fee in-lieu; and landscaping with an approved plan.

236 \* \* \*

237 (g) *In lieu fee.* [(1) *General.* If a person satisfactorily demonstrates that the  
 238 requirements for reforestation or afforestation on-site or off-site cannot  
 239 be reasonably accomplished, the] A person [must contribute]  
 240 contributing money to the forest conservation fund must do so at a rate  
 241 specified by law or Council resolution, but not less than the rate  
 242 required under Section 5-1610 of the Natural Resources Article of the  
 243 Maryland Code. Any in lieu fee payment must be made before any land  
 244 disturbing activity, as defined in [Chapter 19] Section 22A-3, occurs on  
 245 a section of the tract subject to the forest conservation plan. A person  
 246 may make a contribution to the forest conservation fund if the person  
 247 satisfactorily demonstrates that:

248 (1) the requirements for reforestation or afforestation on-site or off-  
 249 site cannot be reasonably accomplished, and appropriate credits  
 250 generated by a forest mitigation bank in the same watershed  
 251 within the County are not available, or if appropriate credits  
 252 generated by a forest mitigation bank in the same watershed  
 253 within the county are not available, that appropriate credits  
 254 generated by a forest mitigation bank in the same county are not  
 255 available; or

256 (2) the off-site reforestation requirements are less than 0.5 acre and  
 257 the Planning Board or Planning Director, as appropriate, finds  
 258 that no on-site priority planting area is present and no other  
 259 appropriate on-site planting area is available.

260 [(2) Specific development situations. Except as specified in  
 261 subsection (f), the Planning Board or Planning Director may  
 262 allow an applicant to pay into the County Forest Conservation  
 263 Fund instead of providing afforestation, reforestation, or  
 264 landscaping in the following situations:

265 (A) Afforestation using tree cover. If an applicant has shown  
 266 that on-site afforestation using forest cover is not  
 267 appropriate under subsection (d)(2), the applicant may pay  
 268 the fee instead of using tree cover to meet any afforestation  
 269 requirement.

270 (B) Afforestation or reforestation using landscaping. An  
 271 applicant may pay the fee instead of using credit for  
 272 landscaping.

273 (C) Afforestation on sites with no priority planting areas. If a  
 274 site has afforestation planting requirements and the

275 Planning Board or Planning Director, as appropriate, finds  
 276 that no on-site priority planting area is present and no other  
 277 appropriate on-site planting area is available, the applicant  
 278 may pay the fee instead of doing off-site afforestation.

279 (D) Reforestation on small properties with no priority planting  
 280 areas. An applicant may pay the fee instead of on-site or  
 281 off-site reforestation on properties less than 5 acres when  
 282 the Planning Board or Planning Director, as appropriate,  
 283 finds that no on-site priority planting area is present and  
 284 no other appropriate on-site planting area is available.

285 (E) Sites with minor reforestation requirements. An applicant  
 286 may pay the fee instead of on-site or off-site reforestation  
 287 for any plan where overall reforestation requirements are  
 288 less than ½ acre and the Planning Board or Planning  
 289 Director, as appropriate, finds that no on-site priority  
 290 planting area is present and no other appropriate on-site  
 291 planting area is available.]

292 (h) *Agreements.*

293 (1) *Maintenance agreement.* A forest conservation plan must  
 294 include a [2] 5-year binding agreement for maintenance of  
 295 conservation areas. A person subject to the binding agreement  
 296 may request that the binding agreement be reduced to 3 years if  
 297 the forest conservation inspector finds that the agreement has  
 298 been fulfilled. The binding maintenance agreement may  
 299 include[, including the] watering (as practical), feeding, non-  
 300 native invasive control, and replanting of areas to be afforested  
 301 or reforested [outside of Special Protection Areas, and 5 years

302 for plantings inside Special Protection Areas]. A maintenance  
 303 agreement may also be required for non-native invasive control  
 304 of forest edge. The binding agreement for maintenance starts  
 305 upon satisfactory inspection of the plantings required under the  
 306 forest conservation plan. A staged project may have more than  
 307 one agreement.

308 \* \* \*

309 (i) *Financial Security.*

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

313 (A) compliance with all requirements of an approved forest  
 314 conservation plan including afforestation, reforestation,  
 315 mitigation trees, and maintenance; or

316 \* \* \*

317 (2) *Preferred form.* The preferred financial security instruments are  
 318 an irrevocable letter of credit or a cash bond for a minimum of 5  
 319 years that may be reduced to 3 years upon request by the person  
 320 subject to the binding maintenance agreement if the forest  
 321 conservation inspector finds that the binding maintenance  
 322 agreement has been fulfilled. The letter of credit must expressly  
 323 state that the total sum is guaranteed to be available and payable  
 324 on demand directly to the Maryland-National Capital Park and  
 325 Planning Commission in the event of forfeiture. A certificate of  
 326 guarantee or a surety bond may also be used, including a bond  
 327 payable to the Commission and County that additionally  
 328 guarantees completion of public improvements associated with

329 the proposed development. The financial security instrument  
 330 must be made payable to the Commission and must be of a form  
 331 and content satisfactory to the Commission and its legal counsel.  
 332 (3) *When required.* The financial security instrument must be  
 333 provided prior to any land disturbing activity, as defined in  
 334 [Chapter 19] Section 22A-3, occurring on a section of the tract  
 335 subject to the forest conservation plan.

336 \* \* \*

337 **22A-13. Forest mitigation banks.**

338 (a) Creating a forest mitigation bank. [(a)] A person may create a forest  
 339 mitigation bank from which applicants may buy credits [by afforesting  
 340 or reforesting an area of land under a forest mitigation bank plan  
 341 approved by the Planning Director].

342 [(b)] (1) The area of land included in [where] the bank [is planted]  
 343 must be at least 1 acre.

344 [(c)] (2) A forest mitigation bank must [use] have native plants [for  
 345 afforestation and reforestation, unless inappropriate].

346 [(d)] (3) A person proposing to create a forest mitigation bank must  
 347 submit a forest mitigation bank plan to the Planning Director[,]  
 348 for review and approval. [which must include:]

349 (4) The forest mitigation bank plan must include:

350 [(1)] (A) a [2-year] maintenance agreement which meets  
 351 the standards in subsection 22A- 12(h)(1);

352 [(2)] (B) all information required by subsection 22A-10(c)  
 353 for a forest conservation plan;

354 [(3)] (C) [the] draft easements, covenants, or deed  
 355 restrictions for the area [to be sold to the developer

356 when credits are withdrawn from the] included in  
 357 the forest mitigation bank; and

358 (D) the number of forest mitigation bank credits  
 359 available for sale as either existing forest credits or  
 360 planted forest credits where one acre of forest  
 361 mitigation bank credit equals 1 acre of planted  
 362 forest, or 2 acres of existing forest.

363 [(e)] (5) Forest mitigation banks must be established in priority  
 364 areas described in subsection 22A-12(e)(3), or in areas  
 365 identified in a master plan or functional plan.

366 [(f)] Credits must not be debited from a forest mitigation bank until  
 367 all trees have been planted and accepted by the Planning  
 368 Director, and either financial security which meets the standards  
 369 in subsection 22A-12(i) has been provided or the Planning  
 370 Director has found that a sufficient number of trees have  
 371 successfully survived for 2 years after planting.]

372 [(g)] To debit credits from an approved forest mitigation bank, the  
 373 easement, covenants, or deed restrictions which assure that the  
 374 newly reforested or afforested area of land remains a forest in  
 375 perpetuity must be conveyed to the Planning Board or its  
 376 assignee and the applicant must show that credits are available  
 377 and the applicant has the right to debit them. The credits must  
 378 buy an amount of land equal to the applicant's off-site  
 379 reforestation or afforestation requirements under its approved  
 380 forest conservation plan.]

381 (b) Purchasing and selling forest mitigation bank credits

382 (1) Before selling forest mitigation bank credits:

- 383                   (A) the forest mitigation bank plan must be approved by the  
 384                   Planning Director; and
- 385                   (B) easements, covenants, or deed restrictions which assure  
 386                   the area of land within the mitigation bank remains a forest  
 387                   in perpetuity must be conveyed to the Planning Board or  
 388                   its assignee and the applicant must show that credits are  
 389                   available and the applicant has the right to debit them.
- 390           (2) Credits must not be debited from a portion of a forest mitigation  
 391           bank where forest planting is required until:
- 392                   (A) all trees have been planted and accepted by the Planning  
 393                   Director; and
- 394                   (B) either financial security which meets the standards in  
 395                   subsection 22A-12(i) has been provided or the Planning  
 396                   Director has found that a sufficient number of trees have  
 397                   successfully survived for 2 years after planting.
- 398           (3) Forest mitigation bank credits must be acquired from a forest  
 399           mitigation bank within the same 8-digit watershed, as delineated  
 400           by the State of Maryland, as where the development activity is  
 401           located. If forest mitigation bank credits are not available within  
 402           the same 8-Digit watershed within the County, applicants can  
 403           then acquire forest mitigation bank credits from any approved  
 404           forest mitigation bank within the County.
- 405           (4) The forest mitigation bank credits acquired must be equal to the  
 406           applicant's off-site reforestation or afforestation requirements  
 407           under the approved forest conservation plan.

\* \* \*

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

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(c) *Required inspections.*

- (1) The Planning Department must conduct [6] the 7 field inspections [of a site as] specified in this subsection at each site.
- (2) The Planning Director must inspect each site that is subject to an approved forest conservation plan,
  - (A) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins;
  - (B) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins;
  - (C) after all construction activities are completed, to determine the level of compliance with the [forest conservation] approved plan;
  - (D) before any required reforestation and afforestation planting is started;
  - (E) after required reforestation and afforestation have been completed, to verify the planting is acceptable and begin the maintenance and management period; [and]
  - (F) 2 years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and
  - [(F)] (G) at the end of the maintenance and management period, to determine the level of compliance with the planting plan and, if appropriate, authorize release of financial security.

436 (3) The Planning Director must conduct inspections (A) through (C)  
437 of this Section for a confirmed exemption from submitting a  
438 forest conservation plan

439 (4) The Planning Director must conduct inspections (A) through (G)  
440 of this Section for a plan approved under Section 22A-9:

441 \* \* \*

442 **22A-17. Corrective actions**

443 (a) *Administrative order.* At any time, including during an enforcement  
444 action, the Planning Director may issue an administrative order  
445 requiring the violator to take one or more of the following actions  
446 within a certain time period specified by the Planning Director:

- 447 (1) stop the violation;
- 448 (2) stabilize the site to comply with a reforestation plan;
- 449 (3) stop all work at the site;
- 450 (4) restore or reforest unlawfully cleared areas;
- 451 (5) submit a restoration plan or forest conservation plan for the
- 452 property;
- 453 (6) place forested or reforested land under long-term protection by a
- 454 conservation easement, deed restriction, covenant, or other
- 455 appropriate legal instrument; or
- 456 (7) submit a written report or plan concerning the violation.

457 \* \* \*

458 **22A-21. Variance**

459 \* \* \*

460 (a) *Application requirements.* An applicant for a variance must:  
461 (1) describe the special conditions peculiar to the property or other  
462 circumstances which would cause the unwarranted hardship;

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(c) *Referral to other agencies for non 22A-12(b)(3) variance requests.*  
Before the Planning Board considers a variance, not related to 22A-12(b)(3), the Planning Director must send a copy of each request to the County Arborist and any other appropriate agency for a written recommendation[.] before the Board acts on the request. If a recommendation on the variance is not submitted to the Planning Board, or Planning Director, as appropriate, within 30 days after the referral, the recommendation must be presumed to be favorable.

\* \* \*

**22A-27. Forest Conservation Fund.**

\* \* \*

(b) *Penalties.* Money collected for noncompliance with a forest conservation plan or the associated [2] 5-year maintenance agreement must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used to administer this Chapter.

\* \* \*

**22A-30. County Arborist**

\* \* \*

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

\* \* \*

(4) review variance requests and reports under Article II but not including those under 22A-12(b)(3);

## LEGISLATIVE REQUEST REPORT

Expedited Bill 36-20  
*Forest Conservation – Amendments*

### DESCRIPTION:

- Expedited Bill 36-20 would:
- apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
- exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
- exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
- clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- provide that an exemption granted expires after 5 years if development has not begun;
- increase the length of the binding maintenance agreement required in forest conservation plans;
- alter the variance process; and
- generally amend the Forest Conservation Law

### PROBLEM:

### GOALS AND OBJECTIVES:

### COORDINATION:

**FISCAL IMPACT:** Department of Finance.

**ECONOMIC IMPACT:** OLO

**EVALUATION:** To be researched.

**EXPERIENCE  
ELSEWHERE:**

**SOURCE OF  
INFORMATION:** Adam Ortiz, Director, Department of Environmental Protection,  
240-777-7781

**APPLICATION  
WITHIN  
MUNICIPALITIES:** None

**PENALTIES:** Class B

F:\LAW\BILLS\2036 Forest Conservation\LRR.Docx



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

JZ  
 CC  
 MM  
 SS  
 PD

February 24, 2020

The Honorable Sidney Katz  
 President, Montgomery County Council  
 100 Maryland Avenue  
 Rockville, MD 20850

Dear Mr. Katz:

On February 20, 2020 the Montgomery County Planning Board recommended 3-0 to transmit a bill to the County Council for changes to Chapter 22A of the County code (Forest Conservations Law). Changes are needed to the Forest Conservation Law to align the Forest Conservation Law with the enabling state law, which was recently amended per Senate Bill 234. Senate Bill 234 became effective statewide on October 1, 2019, and Montgomery County is obligated to incorporate these changes. As detailed in the enclosed staff report, other proposed changes are needed to clarify and update sections of the Forest Conservation Law. A summary of the proposed changes appears below:

1. Modify the preferred sequence for afforestation and reforestation, forest mitigation banks, and in-lieu fee sections to align these sections with the recent amendments to the enabling state law and current staff practice.
2. Close a loophole that currently allows developments that include several platted contiguous lots, each less than 40,000 square feet, to not meet the applicability requirements of the Forest Conservation Law.
3. Amend the criteria for agricultural activities to be exempt from the requirements of Article II to ensure that the property would remain in agricultural use.
4. Exempt local government highway construction activities from the requirements of Article II, in addition to the currently exempt state or County highway construction activities.
5. Clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the requirements of Article II under the (t) modifications exemption.
6. Amend the tree save plan provisions to require the approval of a tree save plan for any activity or development that would be exempt from the requirements of Article II under Section 22A-5 that will impact a significant, specimen, or champion tree.
7. Introduce an expiration date of 5 years on exemptions from submitting a forest conservation plan if construction of the development has not occurred.
8. Increase the length of the binding maintenance agreement required as part of a forest conservation plan from "at least 2 years" to "at least 5 years" with the ability for the obligee to request that the binding maintenance agreement be reduced to 3 years if proper maintenance of the planting areas occurred.
9. Create a new noticing requirement where forest conservation plan applications, not associated with subdivision or site plan, follow a similar process as for those regulatory plans (see enclosed staff practice that would notify staff of this change if it were to take effect).
10. Align the variance application requirement where an applicant must describe the special conditions which would cause unwarranted hardship with the enabling state law.
11. Remove the referral of variances under 22A-12(b)(3) to the County arborist.

The Honorable Sidney Katz  
February 24, 2020  
Page Two

12. Add a new condition that would presume variance recommendations from other agencies to be favorable if a recommendation is not submitted to the Planning Board or Planning Director within 30 days after the referral.

Enclosed is a complete copy of the proposed amendment that the Planning Board would like to be introduced as a bill and a copy of the staff report dated February 7, 2020. Members of the Planning Board and its staff are available to assist the Council in its review of the proposed legislation.

Sincerely,



Casey Anderson  
Chair

Enclosures:     Staff Report – Proposed Changes to the Forest Conservation Law  
                      Proposed Changes to the Forest Conservation Law  
                      Department Memo – Staff Practice – Notice of Proposed Forest Conservation Plans

cc:            Pamela Dunn  
                  Kristin Taddei

Montgomery Planning Board Regulation on

FOREST CONSERVATION – TREES

Issued by: Montgomery County Planning Board  
Regulation No.  
COMCOR No. 22A.00.01

Authority: Montgomery County Code, Chapter 22A-26  
Council Review: Method (2) under Code Section 2A-15

Effective Date: XXXXXX  
Comment Deadline: XXXXXXX

Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.

Staff Contact: Kristin Taddei, Planner Coordinator  
Development Applications and Regulatory Coordination Division  
Kristin.Taddei@montgomeryplanning.org

Address: 8787 Georgia Avenue  
Silver Spring, MD 20910

Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001, and approved by the County Council under Method 2 procedures.

## CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

### **22A.00.01.01 Purpose**

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

### **22A.00.01.02 Authority**

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications..

### **22A.00.01.03 Definitions**

- 1) “Afforestation” means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plant (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the potential of growing to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.
- 2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.
- 3) “Applicant” means the person who is applying for a subdivision, sketch plan, site plan, sediment control permit, project plan, special exception/conditional use, mandatory referral, or Park development plan.
- 4) “Break-even point” means an exact level of forest retention that precludes the need for reforestation.
- 5) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.

- 6) "Category II Conservation Easement" means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.
- 7) "Champion tree" means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- 8) "Conservation easement" means a restriction on the land and the natural features on this land. This easement must be shown on the record plat, if applicable, and its terms and conditions are recorded in the county's land records. If no plat is required, the easement is recorded in the County's land records only.
- 9) "Conservation threshold" means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(a) and (f) of the Forest Conservation Law.
- 10) "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:
  - (a) is likely to contribute to the long-term survival of the species;
  - (b) is likely to be occupied by the species for the foreseeable future; and
  - (c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article.
- 11) "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article .
- 12) "Critical root zone" means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree which should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.
- 13) "Development application" means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for approval of a regulated activity.
- 14) "Declaration of intent" means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:
  - (a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and
  - (b) will not circumvent the requirements of the Chapter.
- 15) "Development program" means a sequence of construction events and timing for submittal of the major forest conservation program elements.
- 16) "Development project" means grading or construction activities occurring on a specific tract. This includes redevelopment projects.
- 17) "Environmental buffer" means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of *Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.

- 18) "Ephemeral channel/stream" means a channel defined as ephemeral per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).
- 19) "Extenuating circumstances" means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.
- 20) "Field survey" means a field investigation of the environmental characteristics of a site, including existing forest.
- 21) "Flood, One Hundred-Year" means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning
- 23) 22) "Floodplain, One Hundred-Year" means the area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or 100-year flood, based on ultimate development of the watershed under existing zoning. "Forest clearing" means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved management plan or timber harvest permit. Forest loss will be based on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.
- 24) "Forest conservation plan" means a plan which outlines the strategies and specific plan proposed for retaining, protecting, and reforesting or afforesting areas on a site.
- 25) "Forest conservation worksheet" means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- 26) "Forest management plan" means a plan establishing conservation and management practices for a landowner after assessment of the resource values of forested properties. This plan is approved by the MD Department of Natural Resources forester assigned to the county after coordination with the county, and by the Planning Director if located within a conservation easement.
- 27) "Forest mitigation bank plan" means a plan that property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.
- 28) "Forest mitigation bank credits" means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.
- 29) "Forest retention" means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a long-term protective agreement.
- 30) "Forest stand delineation" means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity.
- 31) "Growing season" means a period of consecutive frost-free days as stated in the current soil survey for the county. In an average year, a period commencing on April 1<sup>st</sup> and ending on October 31<sup>st</sup>.

- 32) "Intermittent stream" means a stream defined as intermittent in the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).
- 33) "Landscaping credit" means areas shown on a forest conservation plan, that are not forest, but will be receive credit toward a site's reforestation or afforestation requirements. The forest conservation plan must show the dimensions and details for tree planting and landscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native plants or cultivars of native plants..
- 34) "Limits of disturbance" means a clearly designated area within which land disturbance may occur.
- 35) "Maintenance and management agreement" means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.
- 36) "Major amendment to a Forest Conservation Plan" means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal of any conservation easement.
- 37) "Minor amendment to a Forest Conservation Plan" means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal of any conservation easement .
- 38) "Native" means a plant or animal species whose geographic range during precolonial time included the Piedmont of Maryland. Information on native plants can be found in *Woody Plant of Maryland* (Brown and Brown, 1972) and *Herbaceous Plants of Maryland* (Brown and Brown, 1984), as well as other literature sources.
- 39) "Natural regeneration" means the natural establishment of native trees and other native vegetation.
- 40) "Natural resources inventory" means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC).
- 41) "Offsite" means outside the limits of the areas encompassed by a tract.
- 42) "Onsite" means within the limits of an area encompassed by a tract.
- 43) "Perennial stream" means a stream defined as perennial in the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).
- 44) "Planting plan" means a plan showing how areas to be reforested or afforested will be planted.
- 45) "Priority planting area" means areas in which planting must occur unless those areas are not present.
- 46) "Priority retention area" means areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention as part of a forest conservation plan.

- 47) "Qualified professional" mean a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.
- 48) "Regulated activity" means any of the following activities:
- (a) Subdivision;
  - (b) Site plan;
  - (c) Project plan;
  - (d) Sketch plan;
  - (e) Special exception/conditional use on a tract of land greater than 40,000 square feet;
  - (f) Clearing of more than 5,000 square feet of forest;
  - (g) Park Development project on a tract of land greater than 40,000 square feet;
  - (h) An activity that requires a sediment control permit on a tract of land, individually or cumulatively that are greater than 40,000 square feet; or
  - (i) Mandatory referral on a tract of land greater than 40,000 square feet.
- 49) "Retention area" means forested areas, tree stands and the critical root zone of individual trees that will be retained on a site.
- 50) "Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.
- 51) "Specimen tree" means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.
- 52) "Stream buffer" means a strip of land contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).
- 53) "Subdivision" means the definition of subdivision in Chapter 50 of the Montgomery County Code.
- 54) "Tract" means:
- (a) The property, or adjacent properties, subject to a development application, the boundaries of which are described by deed or record plat; or
  - (b) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.
- 55) "Tree save area" means an area designating trees, or stands of trees outside existing forest cover which are to be retained.
- 56) "Tree save plan" means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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

- A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans or regulated activities:
- (1) a development plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - (2) a project plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - (3) a preliminary plan of subdivision, administrative subdivision, or minor subdivision approved by the Planning Board, or Planning Director, under Chapter 50 of the County Code;
  - (4) a site plan approved or amended under Division 59-D-3 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - (5) a site plan approved or amendment under Section 59.7.3.4 of Chapter 59 of the County code;
  - (6) a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County code;a sediment control permit required under Chapter 19 of the County Code;
  - (7) clearing or grading conducted on two or more platted contiguous lots that are part of the same project, that collectively total 40,000 square feet or larger, that are graded at the same time, and where sediment control is required under Chapter 19 of the County Code.
  - (8) a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
  - (9) a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;
  - (10) a mandatory referral; and
  - (11) a park development plan.
- B. The general procedure for meeting the requirements of Chapter 22A for these plans is:
- (1) Preparation by a qualified professional, of a natural resources inventory which may include a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Trees Technical Manual* (MNCPPC). To be reviewed and approved by the Planning Director.
  - (2) Identification by a qualified professional, of forest and tree retention areas per subsection 22A-12(b) of the Forest Conservation Law, Sections 22A.00.01.06 and 22A.00.01.07, and the criteria for areas to be cleared in the *Trees Technical Manual*.
  - (3) Preparation by a qualified professional, of forest conservation plan to be approved by Planning Board or Planning Director. As applicable, which includes:

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

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

##### **Requirements**

A. A Natural Resource Inventory (NRI) application must be considered complete if it contains a complete analysis of existing natural resources and man-made features on a property which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties, whichever is less:

- (1) property boundaries;
- (2) topography at a minimum scale of 1" = 200' with contour intervals not more than 5 feet (larger scale may be required by the Planning Director on a case-by-case basis, if necessary to determine the accuracy of the plan);
- (3) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (4) perennial and intermittent streams and stream buffers per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
- (5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) or appropriate master plan;
- (6) Existing one-hundred year floodplains and associated 25' building restriction lines;
- (7) wetlands and their buffers per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
- (8) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, erodible soils per the list in Appendix C of the *Guidelines for Environmental Management in Montgomery County, Maryland* (MNCPPC), and known serpentinite soils in Montgomery County;

- (9) rare, threatened or endangered plants or animals observed in the field;critical habitat areas observed or documented by the Maryland Department of Natural Resources;
- (10) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- (11) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- (12) Specimen Trees;
- (13) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;
- (14) cultural features and historic sites;
- (15) a site vicinity map at 1" =2000' which shows the location of the site within a square mile and indicates major roads; and
- (16) a table containing acreage of wetland, 100-year floodplains, stream buffers, and environmental buffers.
- (17) A completed NRI/FSD application form, fee schedule worksheet, and review fee.

B. A Forest Stand Delineation (FSD) application must be considered complete if it contains a detailed summary of existing forest and trees on a tract, or forest stand delineation which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties, whichever is less:

- (1) forest stands and field verified boundaries;
- (2) a description of each stand including:
  - (a) acreage;
  - (b) dominant and codominant tree species;
  - (c) size class by species;
  - (d) percent canopy closure;
  - (e) number of canopy layers (vertical structure);
  - (f) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species;
  - (g) a stand condition narrative for each stand including, priority for retention, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and specimen trees by size and species;
- (3) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- (4) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;

- (5) field survey reference points demarked on a plan drawing and in the field;
  - (6) a table containing total acreage of forest, forest in priority retention areas, forest not in priority retention areas, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;
  - (7) a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; and
  - (8) A completed NRI/FSD application form, fee schedule worksheet and review fee.
- C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:
- (1) forest stands as determined by dominant species types and priority for retention;
  - (2) stand condition narrative as described in subsection B(2);
- D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation
- E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a qualified professional; and must exhibit a stamp or certification of the preparer. The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

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

- A. The following areas are considered the highest priority retention areas for protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered:
- (1) trees, shrubs and other plants located in sensitive areas including environmental buffers, slopes over 25 percent (not man-made), erodible soils on slopes of 15% or more, and critical habitats;
  - (2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
  - (3) trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, and endangered species;
  - (4) a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the

following characteristics as further described in the most recent version of the *Trees Technical Manual*:

- (a) high structural and species diversity;
  - (b) few alien or invasive species present;
  - (c) very good overall stand health; and
  - (d) high potential to provide a significant amount of habitat for forest interior dwelling plant, animal, and bird species; and
- (5) an individual tree, and its critical root zone, with one or more of the following characteristics:
- (a) a tree that is part of a historic site or associated with a historic structure;
  - (b) a tree designated as a national, state, or County champion tree;
  - (c) a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
  - (d) trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater; and
  - (e) a tree which is a specimen of a species.
- B. The following areas are not subject to the retention provision in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible:
- (1) a forested area which provides corridor 300 feet or more of primarily native vegetation between two larger forested tracts;
  - (2) a forested stream buffer up to 300 feet on either side of a stream channel;
  - (3) trees which act as a buffer between incompatible land uses and between dwelling and roads;
  - (4) a forest stand, or portions of a stand, with food forest structural diversity; and
  - (5) an individual tree with a diameter, measure at 4.5 feet above the ground, of 24" or greater which will significantly enhance the site through preservation.

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

- A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The forest conservation law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants should strive to maximize forest retention whenever practical.
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as applicable:
- (1) How techniques for retention have been exhausted;

- (2) Why the forests in priority retention areas specified in Section 22A.00.01.07 are not being retained;
  - (3) If forests in priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12e(1)(A) of the Forest Conservation Law;
  - (4) Where on site in priority planting areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
  - (5) How the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.
- C. Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:
- (1) Forested nontidal wetlands which are retained, must be counted toward the forest conservation requirements of this subtitle;
  - (2) Forested wetlands which are permitted to be cleared must be replaced as required under the provisions of Environment Article, Title 9, Annotated Code of Maryland;
  - (3) Clearing within forested wetlands must be shown on the forest conservation plan; and Wetlands are priority retention areas.
- D. Retention Areas.
- (1) Forest retention areas must be at least 10,000 square feet in size and 50 feet wide, or be a part of a larger forest area which extends off-site and is protected.
  - (2) Individual trees described as highest priority for retention in subsection 22A.00.01.07A may receive retention credit equal to the area of their critical root zone protected when at least two thirds of the entire critical root zone is permanently protected by an easement.
  - (3) Individual trees which are not the highest priority for retention and tree stands less than 10,000 square feet and 50 feet wide may be credited toward afforestation and reforestation requirements as part of landscaping credit.
  - (4) Retention area boundaries must be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, or the critical root zones that are protected, whichever is greater.
- E. Afforestation and Reforestation
- (1) Afforestation and reforestation areas must be at least 10,000 square feet in size and 50 feet wide, or be adjacent to an existing forest area (either on-site or off-site) which is protected.
  - (2) The following must be considered as highest priority planting areas for forest conservation plans with required afforestation and reforestation:
    - (a) environmental buffers; ;

- (b) establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Guidelines for Environmental Management for Development in Montgomery County, Maryland* (MNCPPC).
  - (c) establish or enhance forested areas on 100-year floodplains, when appropriate;
  - (d) establish or increase existing forested corridors to connect existing forest within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
  - (e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - (f) establish planting to stabilize natural slopes of 25% or greater and 15% or greater with erodible soils including slopes of ravines or other natural depressions;
  - (g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-way's;
  - (h) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
  - (i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.
- (3) Planting plans for afforestation and reforestation must include the following:
- (a) a minimum of 5 native tree species (unless the site is to be actively managed under an approved forest management plan) and 2 species of native understory shrubs;
  - (b) appropriate site preparation, protection and/or maintenance measures as described in the latest version of the Trees Technical Manual; and
  - (c) a stocking rate for trees and shrubs and survival requirements, as shown in the following chart:

Size	Number Required	Approximate	Survival
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	(per acre) (1)	Spacing (feet on center) (2)	Requirements (at the end of the 2 <sup>nd</sup> growing season) (3)
<b>TREES</b>			
¾" to 1" caliper; B&B or container grown (minimum 5 gal.)	200	12' to 15'	75% or 150 per acre(4)
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre(5)
<b>SHRUBS</b>			
18" to 24" height; container grown	33	(6)	

**Notes:**

- (1) In certain circumstances, any combination of the above mentioned stocking options may be appropriate strategies to fulfill the requirements of an approved Forest Conservation Plan. Instances where the use of combination planting may be appropriate are described in the *Trees Technical Manual*. Use of alternative stocking will be evaluated, along with necessary protection and maintenance measures, on a case-by-case basis by the Planning Board.
- (2) Spacing does not imply that trees or shrubs must be planted in a grid pattern although it may be necessary for mowing to control invasive vegetation or otherwise reduce competition for the planted tree.
- (3) If the tree survival at the end of the maintenance period falls below the survival requirements, reinforcement planting up to that amount will be required. If tree survival falls below 50% of the total trees planted, extension of the maintenance period will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements, in addition to the required planting, on a case-by-case basis as determined by the Planning Director.
- (4) Surviving tree must be at least 1" caliper to receive full credit toward survival requirements. Reinforcement planting must be 1" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.
- (5) Surviving tree must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees. All trees to be accepted must be healthy and have the main leader intact with minimal deer browse.
- (6) Shrubs should be evenly distributed over the planting area and among the trees. On a case-by-case basis, shrubs may be substituted with native trees particularly when there is evidence of deer predation or high incidence of non-native and invasive plants and materials.

**F. Tree Save Plans.**

- (1) Development applications on tracts which impact significant, specimen or champion trees, including those on adjoining properties, are required to submit a tree save plan.
- (2) Preserving specimen or champion trees, and stands of trees which are valuable for compatibility reasons, must be included in these plans. If the loss of these trees is shown to be unavoidable, replacement must be required.
- (3) The replacement ratio must be determined in the following manner:

- (a) Specimen and champion trees must be replaced by a planting plan which may be required to include planting or transplanting of large trees;
  - (b) Significant tree stands must be replaced to replace the function of the stand; for instance, trees which provided screening must be replaced in sufficient kind and number to perform the same function.
- (4) The tree save plans must show on-site or off-site trees 6" DBH or greater located along the limits of disturbance if the proposed activity would impact the critical root zone of those trees, and must identify methods to preserve and protect those trees.

G. Credit Toward Afforestation and Reforestation for Landscaping and Tree Save

- (1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.
- (2) Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements.
- (3) Newly planted landscape trees, within landscape areas must be 3" minimum caliper stock to be counted toward requirements.
- (4) Newly planted trees outside of forest, or designated landscape areas, must be 3" minimum caliper stock to be counted toward requirements.
- (5) Street trees planted within a public right-of-way or along private streets/roads will not receive any credit toward the requirements.
- (6) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:
  - (i) developments in urban areas;
  - (ii) redevelopments;
  - (iii) high-density residential developments;
  - (iv) commercial and industrial developments;
  - (v) high density mixed-use developments; and
  - (vi) some institutional areas.
- (7) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements as follows:
  - (a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may receive full credit for their area;
  - (b) landscaping areas and retained tree stands which are less than 2,500 square feet in size or 35 feet wide may receive one quarter credit for their area;
  - (c) individual landscape trees may receive one quarter credit for the projected area of their canopy at 20 years;

- (d) individual non-priority trees which are retained may receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
  - (e) the total credit from these areas must not exceed twenty percent of the overall reforestation requirement for a site.
- (8) Landscaping, retention of tree stand, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:
- (a) sites with tree cover requirements per subsection (3):
    - (i) landscaping areas or retained tree stands of any size may receive full credit for their area;
    - (ii) individual landscape trees which are retained may receive full credit for the protected area of canopy at 20-years; and
    - (iii) individual trees, or tree stands, which are retained may receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;
  - (b) sites with forest cover requirements:
    - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may receive full credit for their area;
    - (ii) landscaping areas or retained tree stands which are at least 2,500 square feet in size or less than 35 feet wide may receive one quarter credit for their area;
    - (iii) individual non-priority landscape trees may receive one quarter credit for the projected area of their canopy at 20-years;
    - (iv) individual trees which are retained may receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
    - (v) the total credit from these areas must not exceed twenty percent of the overall afforestation requirement for a site.

#### **22A.00.01.09 Forest Conservation Plan Requirements**

##### **A. Preliminary Forest Conservation Plans.**

- (1) Development applications that need more than one approval must submit a preliminary forest conservation plan in conjunction with the first approval. The plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.
- (2) A preliminary forest conservation plan must contain the following:
  - (a) the shape and dimension of lots, showing locations of any existing structures and improvements, including paved areas;

- (b) locations and dimension of all existing and proposed rights-of-way, setback, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as parts of the development application must be identified);
- (c) location of building restriction lines and areas to be conserved including environmental buffers;
- (d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;
- (e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, including acreage, with appropriate justification and proposed long-term protection methods (a conceptual grading plan and/or a more detailed tree survey may be required to determine the feasibility of proposed retention areas);
- (f) proposed locations of afforestation and reforestation areas, including acreage, and mitigation trees, if required;
- (g) a table containing the following information:
  - (i) acreage of tract;
  - (ii) acreage of the tract remaining part of an agricultural use;
  - (iii) acreage of road and utility rights-of-way which will not be improved as part of the development application;
  - (iv) acreage of total existing forest;
  - (v) acreage of forest in priority retention areas;
  - (vi) acreage of forest not in priority retention areas;
  - (vii) acreage of total forest retention in priority retention areas;
  - (viii) acreage of total forest retention not in priority retention areas;
  - (ix) acreage of total forest cleared in priority retention areas;
  - (x) acreage of forest cleared not in priority retention areas;
  - (xi) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;
  - (xii) acreage of forest retained, cleared, and planted within wetlands;
  - (xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;
  - (xiv) acreage of forest retained, cleared, and planted within stream buffers;
  - (xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
  - (xvi) linear feet average width of stream buffer provided; and
- (h) a forest conservation worksheet showing calculation of forest conservation requirements.

B. Final Forest Conservation Plans

- (1) A final forest conservation plan must be based on final site grading, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application and in conjunction with the preliminary forest conservation plan.
- (2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h) a final forest conservation plan must include:
  - (a) conceptual or final grading plans which include building locations and footprint, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;
  - (b) a limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;
  - (c) a survey of trees with a diameter of 24 inches and greater at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas) , within 50' on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table.
  - (d) retention areas including forest, tree stands and other individual trees to be saved including acreage;
  - (e) an afforestation and/or reforestation planting plan, if required, which contains:
    - (i) location and acreage of areas to be planted;
    - (ii) an analysis of the suitability of the site for planting and a description of necessary methods;
    - (iii) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;
    - (iv) a plant materials table including size of plants to be installed and quantities;
    - (v) planting and inspection schedule which is tied to the construction sequence for the project;
    - (vi) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c);; and
    - (vii) a maintenance and management agreement; and
  - (f) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;

- (g) a protection plan which shows:
  - (i) location of temporary protection devices which must be installed if clearing, grading, or construction occurs within 50 feet of a retention area boundary;
  - (ii) stockpile areas and borrow pits;
  - (iii) specifications and details for the protection device;
  - (iv) a narrative of stress reduction or other measures which are needed for specific trees;
  - (v) a field inspection schedule pursuant to Section 22A.00.01.10;
  - (vi) location of permanent protection devices; an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of the critical root zone is impacted; and
  - (vii) An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when 30% or more of the critical root zone is impacted.
- (h) identification of how the off-site planting requirements will be met either by making a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite;
  - (i) If off-site planting is going to occur, the forest conservation plan must include the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 22A.00.01.08E(2).

C. Noticing Requirements for Forest Conservation Plans.

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

**22A.00.01.10 Inspections**

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

- (1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should be to field verify the limits of clearing specified on the approved plan, authorize necessary adjustments, and to authorize necessary stress reduction measures and installation of protection devices);
- (2) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);

- (3) after completion of all construction activities to determine the level of compliance with the approved plan;
  - (4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specification);
  - (5) after required reforestation and afforestation planting has been completed to verify that the planting is acceptable and to begin the required maintenance and management period;
  - (6) Two years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and
  - (7) At the end of the maintenance and management period to determine the level of compliance with provisions of the planting plan and, if appropriate, authorize release of any financial security.
- B. The applicant must:
    - a. Request these inspections at the designated points.
    - b. Submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31<sup>st</sup> and April 30<sup>th</sup> of each year for the duration of the maintenance and management period.
  - C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10.A.
  - D. For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

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

- A. A request for exemption from forest conservation plan requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law must be in writing to the Planning Director.
- B. The following information must be provided as part of an exemption request:
  - (1) An application form;
  - (2) A written request detailing how the exemption applies to the proposed plan;
  - (3) A Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06 and the guidelines in the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
  - (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
  - (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.

- C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
- (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if information is submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show existing and proposed topography and forest boundaries;
  - (2) agricultural exemptions per subsection 22A-5(b) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries;
  - (3) commercial logging and timber harvesting exemptions per subsection 22A-5(d) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and
  - (4) applications for other exemptions, if the site being developed does not contain any forest, specimen or significant trees, existing conservation easements, or environmentally sensitive features, and a plan showing existing features and topography is submitted with the exemption request.
- D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.
- E. The Planning Board, or Planning Director, may require a person failing to file an exemption request per section 22A-4 of the Forest Conservation Law, or found in noncompliance with an exemption or a declaration of intent to:
- (1) Submit a Forest Conservation Plan and meet the requirements in the Forest Conservation Law for a regulated activity;
  - (2) Pay a noncompliance fee;
  - (3) Be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and/or
  - (4) Submit a request to be exempt from submitting a forest conservation plan.
- F. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file an exemption by a person required to file is a violation of this subtitle.
- G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation automatically expires without notice.

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

- A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation

Plan. A declaration of intent is required for the following exemptions from submitting a forest conservation plan;

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

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

- A. Forest Conservation Plan Amendments.
  - (1) Minor amendments which do not result in more than a total of 5,000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and substituting one area of forest, for retention of another of equal or greater size and value.
  - (2) Major amendments which entails:
    - (a) more than a total of 5,000 square feet of additional forest clearing must be approved by Planning Board or Planning Director (depending on who approved the original plan), or
    - (b) Removal of any conservation easement must be approved by the Planning Board.
- B. Exemptions from Submitting a Forest Conservation Plan
  - (1) A request to amend an exemption from submitting a forest conservation plan must be submitted to and approved by the Planning Director.

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

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

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

B. Bonding.

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

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

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

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

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

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

Montgomery Planning Board Regulation on

FOREST CONSERVATION – TREES

Issued by: Montgomery County Planning Board  
Regulation No.  
COMCOR No. 22A.00.01

Authority: Montgomery County Code, Chapter 22A-26  
Council Review: Method (2) under Code Section 2A-15

Effective Date: XXXXXX  
Comment Deadline: XXXXXXX

Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.

Staff Contact: Kristin Taddei, Planner Coordinator  
Development Applications and Regulatory Coordination Division  
Kristin.Taddei@montgomeryplanning.org

Address: 8787 Georgia Avenue  
Silver Spring, MD 20910

Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001, and approved by the County Council under Method 2 procedures.

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## CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

### 22A.00.01.01 Purpose

- ~~(a) Purpose. -These proposed regulations identify the steps that an applicant must take to comply with Chapter 22A of the County Code. These regulations were adopted by the Planning Board and approved as regulations by the County Council under Chapter 22A.~~
- ~~(b) amends Montgomery County Planning Board Regulation No. 18-01Am1-97, Forest Conservation – Tree Regulations to update and clarify existing provisions and to make the regulation conform to changes that occurred to Chapters 22A, 50, and 59 of the County cCode and to add the regulatory provisions from the existing Trees Technical Manual, including updating and clarifying these provisions as necessary.~~
- ~~(b) Summary. Comment Deadline: October 31, 2001.~~
- ~~(c)(b) Address. Countywide Planning Division-Environmental Planning, The Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910.~~
- ~~(d) Staff Contact. Cathy Conlon, (301) 495-4540. These regulations are intended to identify the steps that an applicant must take to comply with Chapter 22A of the County cCode~~

### 22A.00.01.02 Authority

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications, approvals, special exception applications, or sediment control permit applications.

### 22A.00.01.03 ~~Transition Provision~~ Definitions

~~For purposes of subsection 22A-7(a)(2) of the Forest Conservation Law, the term “substantially complete” means a plat that has received Planning Board approval my July 1, 1992.~~

~~A.—The terms in § B of this regulation have the meaning indicated. Terms not defined in this regulation have the meaning given to them in Chapter 22A of the County Code.~~

~~B.—Terms Defined.~~

- 1) "Afforestation" means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plant (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the potential of growing to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.
- 2) "Afforestation threshold" means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.
- 3) "Applicant" means the person who is applying for a subdivision, ~~or sketch plan,~~ site plan approval, a grading ~~or~~ sediment control permit, project plan, special exception/conditional use, mandatory referral, or Park development plan. ~~or project plan approval if the applicant is a State or local agency; or who has received approval of a forest stand delineation or forest conservation plan.~~
- 4) "Break-even point" means an exact level of forest retention that precludes the need for reforestation.
- 5) "Category I Conservation Easement" means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
- 4)6) "Category II Conservation Easement" means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.
- 5)7) "Champion tree" means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- 6)8) "Conservation easement" means a restriction on the land and the natural features on this land. This easement must be is shown on the record plat, if applicable, and its terms and conditions are recorded in the county's land records. If no plat is required, the easement is recorded in the County's land records only.
- 7)9) "Conservation threshold" means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(a), and (f) of the Forest Conservation Law.
- 8)10) "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:
  - (a) is likely to contribute to the long-term survival of the species;
  - (b) is likely to be occupied by the species for the foreseeable future; and
  - (c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article, ~~§ 4-2A-06 or 10-2A-06, Maryland code.~~
- 9)11) "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article ~~Natural Resources Article, § 4-2A-04 or 10-2A-04, Annotated Code of Maryland.~~

~~10)~~12) “Critical root zone” means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree which should be undisturbed~~protected~~ unless ~~other supplemental~~ protection measures are provided to protect the long-term viability of the tree.

~~11)~~13) “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for ~~plan~~ approval of a regulated activity~~or sediment control permit~~.

~~12)~~14) “Declaration of intent” means a signed and notarized statement by a landowner that the cutting of trees on the landowner’s property:-

(a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and

(b) will not circumvent the requirements of the Chapter.

~~13)~~15) “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.

16) “Development project” means grading or construction activities occurring on a specific tract. This includes redevelopment projects.

17) “Environmental buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of *Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.

~~14)~~18) “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC).

~~15)~~19) “Extenuating circumstances” means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.

~~16)~~20) “Field survey” means a field investigation of the environmental characteristics of a site, including existing forest.

~~17)~~21) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year, ~~or which occurs, on average, once every 100 years~~. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning.

—22) “Floodplain, One Hundred-Year” means the area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or 100-year flood, based on ultimate development of the watershed under existing zoning.

23) “Forest clearing” means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved management plan or timber harvest permit. Forest loss will be based

on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.

- 24) "Forest conservation plan" means a plan which outlines the strategies and specific plan proposed for retaining, protecting, and reforesting or afforesting areas on a site.
- 25) "Forest conservation worksheet" means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- 26) "Forest management plan" means a plan establishing conservation and management practices for a landowner after assessment of the resource values of forested properties. This plan is approved by ~~the county, or by~~ the MD Department of Natural Resources forester assigned to the county after coordination with the county, and by the Planning Director if located within a conservation easement.
- ~~27)~~ "Forest mitigation bank planagreement" means a ~~plan that property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.~~ agreement entered into by an individual owning a forest mitigation bank and the Planning Board, which commits the banker to certain procedures and requirements when creating and operating a forest bank.
- ~~27)~~28) "Forest mitigation bank credits" means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.
- 29) "Forest mitigation bank plan" means a plan ~~for the approval of a forest mitigation bank submitted to the Planning Department Director by an individual proposing to establish a forest mitigation bank as part of a forest conservation plan or separately.~~
- ~~28)~~30) "Forest retention" means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a ~~category I conservation easement~~long-term protective agreement.
- ~~29)~~31) "Forest stand delineation" means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity.
- ~~30)~~32) "Growing season" means a period of consecutive frost-free days as stated in the current soil survey for the county. In an average year, a period commencing on April 1<sup>st</sup> and ending on October 31<sup>st</sup>.
- ~~31)~~33) "Intermittent stream" means a stream defined as intermittent in the latest version of the ~~Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland~~ (MNCPPC).
- ~~32)~~34) "Landscaping ~~credit~~plan" means areas shown on a forest conservation plan, that are not forest, but will be receive credit toward a site's reforestation or afforestation requirements. The forest conservation plan requires the use of native or indigenous plants and must show the drawn to scale and made part of the approved forest conversation plan, showing dimensions and details for tree planting and large landscapinlandscaping areas. Any planting for landscaping credit to meet the

forest conservation plan requirements must use native or indigenous plants or cultivars of native plants, and areas that will be applied as credit toward a site's reforestation or afforestation requirements. The use of native or indigenous plant is required, when appropriate.

~~33)~~35) "Limits of disturbance" means a clearly designated area within which land disturbance is slated to occur.

~~36)~~ "Maintenance and management agreement" means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.

~~37)~~ "Major amendment to a Forest Conservation Plan" means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal of any conservation easement.

~~34)~~38) "Minor amendment to a Forest Conservation Plan" means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal of any conservation easement.

~~35)~~39) "Native" means a plant or animal species whose geographic range during precolonial time included the Piedmont of Maryland. Information on native plants can be found in *Woody Plant of Maryland* (Brown and Brown, 1972) and *Herbaceous Plants of Maryland* (Brown and Brown, 1984), as well as other literature sources.

~~36)~~40) "Natural regeneration" means the natural establishment of native trees and other native vegetation which have become established mature with at least 400 woody, free to grow tree seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

~~37)~~41) "Natural resources inventory" means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC).

~~38)~~42) "Offsite" means outside the limits of the areas encompassed by a tract.

~~39)~~43) "Onsite" means within the limits of an area encompassed by a tract.

~~40)~~44) "Perennial stream" means a stream defined as perennial in the latest version of *Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC). "Planning Director" means the Director the Montgomery County Planning Department, or the Director's designee.

~~45)~~ "Planting plan" means a plan showing how areas to be reforested or afforested will be planted.

~~41)~~46) "Priority planting area" means areas in which planting must occur unless those areas are not present.

~~42)~~47) "Priority retention area" means forest areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention as part of a forest conservation plan.

~~43~~48) “Qualified professional” mean a [Maryland](#) licensed forester, [Maryland](#) licensed landscape architect, or other qualified professional approved by the State.

~~44~~49) “Regulated activity” means any of the following activities:

(a) Subdivision;

~~(b)~~ [GradingSite plan](#);

~~(c)~~ [Project plan](#);

~~(d)~~ [Sketch plan](#);

~~(b)~~~~(e)~~ [Special exception/conditional use on a tract of land greater than 40,000 square feet](#);

~~(f)~~ [Clearing of more than 5,000 square feet of forestForest clearing](#);

~~(e)~~~~(g)~~ [Park Development project on a tract of land greater than 40,000 square feet](#);

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

~~(e)~~~~(i)~~ [Mandatory referral on a tract of land greater than 40,000 square feetProject plan of federal, state, or local agency](#).

~~45~~50) “Retention area” means forested areas, tree stands and [the critical root zone of](#) individual trees that will be retained on a site.

~~46~~51) “Selective clearing” means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

~~47~~52) “Specimen tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.

~~48~~53) “Stream buffer” means a strip of [land-natural vegetation](#) contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of [Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland](#) (MNCPPC).

~~49~~54) “Subdivision” means the definition of subdivision in [Section Chapter 50-1](#) of the Montgomery County Code.

~~50~~55) “Tract” means:

~~(a)~~ The property, [or adjacent properties](#), subject to a development application ~~or a sediment control permit~~, the boundaries of which are described by deed or record plat;

~~(b)~~~~(a)~~ [The entire property subject to a planned unit development if a development application or a sediment control permit if it is developed as a single projectincluded in a planned unit development](#); or

~~(c)~~~~(b)~~ [The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project](#).

~~51~~56) “Tree save area” means an area designating trees, or stands of trees outside existing forest cover which are to be retained.

~~52)57)~~ “Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

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

A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans

~~for a~~ regulated activity~~es~~:

- (1) a development plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
- (2) a project plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
- (3) a preliminary plan of subdivision, administrative subdivision, or minor subdivision approved by the Planning Board, or Planning Director, under Chapter 50 of the County Code;
- ~~(4)~~ a site plan approved or amended under Division 59-D-3 of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
- ~~(5)~~ a site plan approved or amendment under Section 59.7.3.4 of Chapter 59 of the County code ~~Division 59-D-3 site plan~~;
- ~~(4)~~ a sketch plan approved under Section 59.7.3.3 of Chapter 59 of the County code;
- ~~(6)~~ a sediment control permit required under Chapter 19 of the County Code;
- ~~(5)(7)~~ clearing or grading conducted on two or more platted contiguous lots that are part of the same project, that collectively total 40,000 square feet or larger, that are graded at the same time, and where sediment control is required under Chapter 19 of the County Code.
- ~~(8)~~ a special exception approved under Article 59-G of Chapter 59 of the County Code that was in effect prior to October 30, 2014;
- ~~(6)(9)~~ a conditional use approved under Section 59.7.3.1 of Chapter 59 of the County Code;
- ~~(7)(10)~~ a mandatory referral; and
- ~~(8)(11)~~ a park development plan.

B. The general procedure for meeting the requirements of Chapter 22A for these plans is:

- (1) Preparation by a qualified professional, of a natural resources inventory which may include a forest stand delineation, as described in Section 22A.00.01.06 and in the latest versions of Environmental Guidelines: Guidelines for Environmental Management

of Development in Montgomery County, Maryland (MNCPPC) and the *Trees Technical Manual* (MNCPPC). To be reviewed and approved by the Planning Director.

- (2) Identification by a qualified professional, of forest and tree retention areas per subsection 22A-12(b) of the Forest Conservation Law, Sections 22A.00.01.06 and 22A.00.01.07, and the criteria for areas to be cleared in the *Trees Technical Manual*.
- (3) Preparation by a qualified professional, of forest conservation plan to be approved by Planning Board or Planning Director. As applicable, which includes:
  - (a) lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and protected critical habitats wherever practical;
  - (b) areas of existing forest, areas of forest to be removed, and areas of forest to be retained;
  - (c) afforestation and reforestation areas and planting plan, as required;
  - (d) appropriate protection and maintenance measures; and
  - (e) a timetable for construction and planting.

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

A. — A Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information:

a complete analysis of existing natural resources and man-made features on a property, or natural resources inventory which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining properties lots, whichever is less:

- (1) a property boundaries;
- (2) topography at a minimum scale of 1" = 200' with contour intervals not more than 5 feet (larger scale may be required by the Planning Director on a case-by-case basis, if necessary to determine the accuracy of the plan);
- (3) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (4) perennial and intermittent streams and stream buffers per the latest version of the *Environmental Guidelines: g* Guidelines in for Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
- (4)(5) ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Environmental Guidelines: g* Guidelines for in

[Environmental Management of Development in Montgomery County, Maryland \(MNCPPC\) or appropriate master plan;](#)

~~(5)~~(6) [Existing](#) one-hundred year floodplains and associated 25' building restriction lines;

~~(6)~~(7) [wetlands](#) and their buffers per the latest version of the [Environmental Guidelines: ~~Guidelines for~~ Environmental Management of Development in Montgomery County, Maryland \(MNCPPC\);](#)

(8) [soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, ~~and~~ erodible soils per the list in Appendix C of the Environmental Guidelines: Guidelines for Environmental Management in Montgomery County, Maryland \(MNCPPC\), and known serpentinite soils in Montgomery County;](#)

~~—rare, threatened or endangered plants or animals observed in the field;~~

~~on slopes of 15% or more, and shallow soils;~~

~~rare, threatened or endangered plants or animals observed in the field;~~

~~(7)~~(9) [critical habitat areas observed or documented by the Maryland Department of Natural Resources;](#)

(10) [aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;](#)

(11) [champion trees and trees that have a diameter at 4.5 feet above the ground \(DBH\) that is 75% or more of the diameter of the current state champion for that species;](#)

~~(12) [Trees that are specimens for their species](#)Specimen Trees;~~

~~(8)~~(13) [a table that identifies individual trees that have a diameter at 4.5 feet above the ground \(DBH\) of 24" or greater by size and species and the health of those trees;](#)

~~(9)~~(14) [cultural features and historic sites;](#)

~~(10)~~(15) [a site vicinity map at 1" = 2000' which shows the location of the site within a square mile and indicates major roads; and](#)

(16) [a table containing acreage of wetland, 100-year floodplains, ~~and~~ stream buffers, and environmental buffers.](#)

~~(11)~~(17) [A completed NRI/FSD application form, fee schedule worksheet, and review fee.](#)

B. A Forest Stand Delineation (FSD) application must be considered complete if it contains a detailed summary of existing forest and trees on a tract, or forest stand delineation which is verified by field survey and contains the following information to cover the development site and first 100 feet of adjoining land around the perimeter or the width of adjoining [properties-lots](#), whichever is less:

(1) forest stands and field verified boundaries;

(2) a description of each stand including:

- ~~(a)~~ ~~(a)~~ acreage;
- ~~(b)~~ ~~(b)~~ dominant and codominant tree species;
- ~~(c)~~ ~~(c)~~ size class by species;
- ~~(a)~~ ~~(d)~~ percent canopy closure;

(e) number of canopy layers (vertical structure);

~~(f)~~ percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species;

~~(f)~~~~(g)~~ \_\_\_\_\_ and a stand condition narrative for each stand including, **priority for retention**, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and specimen trees by size and species;

- (3) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- (4) a table that identifies individual trees in good health that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;
- (5) field survey reference points demarked on a plan drawing and in the field; ~~and~~
- ~~(6)~~ a table containing ~~acreage of total acreage of forest, forest in priority retention areas, forest not in priority retention areas~~, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;
- ~~(7)~~ a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; and;
- ~~(6)~~~~(8)~~ A completed NRI/FSD application form, fee schedule worksheet and review fee.

C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:

~~(1)~~ a natural resources inventory as described in subsection A(1);

~~(2)~~~~(1)~~ \_\_\_\_\_ forest stands as determined by dominant species types and priority for retention;

~~(3)~~~~(2)~~ \_\_\_\_\_ stand condition narrative as described in subsection BA(2)(b)(vii);

~~(4)~~ a proposed limit of disturbance line; and  
proposed areas of long-term protection.

D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation

D.E. The A-Natural Resources Inventory and F-forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect, or qualified professional as specified in COMAR

~~08.19.06.01A~~; and must exhibit a stamp or certification of the preparer. [The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.](#)

### 22A.00.01.07 Priorities for ~~Forest Stand~~ Retention

A. The following ~~areas trees, shrubs, plants, and specific areas~~ are considered the highest priority ~~for~~ retention ~~areas for and~~ protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered:

- (1) trees, shrubs and other plants located in sensitive areas including [environmental buffers](#) ~~intermittent and perennial stream and their buffers~~, slopes over 25 percent (not man-made), ~~nontidal wetland and their buffers~~, erodible soils on slopes of 15% or more, ~~100-year floodplains~~, and critical habitats;
- (2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- ~~(2)~~(3) [trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, ~~or~~ and endangered species;](#)
- ~~(3)~~(4) [a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics as further described in the most recent version of the \*Trees Technical Manual\*:](#)
  - (a) high structural and species diversity;
  - (b) few alien or invasive species present;
  - (c) very good overall stand health; and
  - (d) high potential to provide a significant amount of habitat for forest interior dwelling plant, animal, and bird species; and
- ~~(4)~~(5) [an individual tree, and its critical root zone, with one or more of the following characteristics:](#)
  - (a) a tree that is part of a historic site or associated with a historic structure;
  - (b) a tree designated as a national, state, or ~~County local~~ [County](#) champion tree;
  - (c) a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state ~~or County~~ [or County](#) champion tree;
  - ~~(c)~~(d) [trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater;](#) and
  - ~~(d)~~(e) [a tree which is a specimen of a species.](#)

- B. The following areas are not subject to the retention provision in subsection 22A-12(b)(1) of the Forest Conservation Law, but should be given consideration for preservation where feasible:
- (1) a forested area which provides corridor 300 feet or more of primarily native vegetation between two larger forested tracts;
  - (2) a forested stream buffer up to 300 feet on either side of a stream channel;
  - (3) trees which act as a buffer between incompatible land uses and between dwelling and roads;
  - (4) a forest stand, or portions of a stand, with food forest structural diversity; and
  - (5) an individual tree with a diameter, measure at 4.5 feet above the ground, of 24" or greater which will significantly enhance the site through preservation.

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

- A. In developing a forest conservation plan, the applicant must give priority to techniques for ~~maximizing retention of retaining~~ existing forest on the site. The forest conservation law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants should strive to ~~maximize forest retention whenever practical reach the break-even point on forested sites so that no replanting is required.~~
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as applicable:
- (1) How techniques for retention have been exhausted;
  - (2) Why the ~~priority~~ forests ~~and in~~ priority ~~retention~~ areas specified in Section 22A.00.01.07 are not being retained;
  - (3) If ~~priority~~ forests ~~in and~~ priority ~~retention~~ areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12e(1)(A) of the Forest Conservation Law;
  - (4) Where on site in priority ~~planting~~ areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
  - (5) How the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.
- C. ~~Nontidal~~ Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:
- (1) Forested nontidal wetlands which are retained, must be counted toward the forest conservation requirements of this subtitle;

- (2) Forested wetlands which are permitted to be cleared must be replaced as required under the provisions of Environment Article, Title 9, Annotated Code of Maryland;
- (3) Clearing within forested wetlands must be shown on the forest conservation plan, ~~but the area must be subtracted on an acre for acre basis from the total amount of forest to be cut or cleared, and the reforestation requirements of this subtitle must be calculated using the reduced acreage;~~ and
- ~~— Nontidal wWetlands must are be considered to be be~~ priority retention areas for forest retention and replacement.

D. Retention Areas.

- (1) Forest retention areas must be at least 10,000 square feet in size and 50 feet wide, or be a part of a larger forest areas which extends off-site and is protected.
- (2) Individual trees described as highest priority for retention in subsection 22A.00.01.07A(4) ~~may~~must receive retention credit equal to the area of their critical root zone protected when at least two thirds of the entire critical root- zone is permanently protected by an easement.
- (3) Individual trees which are not the highest priority for retention and tree stands less than 10,000 square feet and 50 feet wide may be credited toward afforestation and reforestation requirements as part of landscaping credit.
- (4) Retention area boundaries must be determined by a measure of the aerial extent of remaining forest cover which includes the outer perimeter of the canopy of individual trees, or the critical root zones that are protected, whichever is greater.

E. Afforestation and Reforestation

- (1) Afforestation and reforestation areas must be at least 10,000 square feet in size and 50 feet wide, or be adjacent to an existing forest area (either on-site or off-site) which is protected.
- (2) The following must be considered as highest high-priority planting areas for forest conservation plans with for required afforestation and reforestation:
  - ~~(a)~~ environmental buffers; establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
  - ~~(a)~~(b) establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Environmental Guidelines: Guidelines for Environmental Management for Development in Montgomery County, Maryland* (MNCPPC).
  - ~~(b)~~(c) establish or enhance forested areas on 100-year floodplains, when appropriate;

- ~~(e)~~(d) establish or increase existing forested corridors to connect existing forest within or adjacent to the site. Where practical forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- ~~(e)~~(e) establish or enhance forest buffers adjacent to critical habitats where appropriate;
- ~~(e)~~(f) establish planting to stabilize natural slopes of 25% or greater and 15% or greater with erodible soils including slopes of ravines or other natural depressions;
- ~~(f)~~(g) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-way's; ~~and~~
- ~~(h)~~ establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; ~~and~~
- ~~(g)~~(i) non-forested wetlands are priority planting areas; however, these areas may be left in their existing condition when appropriate.

- (3) Planting plans for afforestation and reforestation must include the following:
- (a) a minimum of 5 native tree species (unless the site is to be actively managed under an approved forest management plan) and 2 species of native understory shrubs;
  - (b) appropriate site preparation, protection and/or maintenance measures as described in the latest version of the Trees Technical Manual; and
  - (c) a stocking rate for trees and shrubs and survival requirements, as shown in the following chart:

Size	Number Required (per acre) (1)	Approximate Spacing (feet on center) (2)	Survival Requirements (at the end of the 2 <sup>nd</sup> growing season) (3)
<b>TREES</b>			
<del>Whips; 3'-4' height, Container grown (minimum 2 gal.)</del>	<del>350</del>	<del>10' to 12'</del>	<del>75% or 260 per acre</del>
¾" to 1" caliper; B&B or container grown (minimum 5 gal.)	200	12' to 15'	75% or 150 per acre(4)
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre(5)

<b>SHRUBS</b>			
18" to 24" height; container grown	33	(6)	

**Notes:**

- (1) In certain circumstances, any combination of the above mentioned stocking options; ~~or variation of these options in combination with container grown seedlings and/or natural regeneration~~ may be appropriate strategies to fulfill the requirements of an approved Forest Conservation Plan. Instances where the use of combination planting may be appropriate are described in the *Trees Technical Manual*. Use of alternative stocking will be evaluated, along with necessary protection and maintenance measures, on a case-by-case basis by the Planning Board.
- (2) Spacing does not imply that trees or shrubs must be planted in a grid pattern although it may be necessary for mowing to control invasive vegetation or otherwise reduce competition for the planted tree.
- (3) If the tree survival at the end of the ~~two-year~~ maintenance period falls below the survival requirements, reinforcement planting up to that amount will be required. If tree survival falls below 50% of the total trees planted, extension of the maintenance period ~~up to another two years~~ will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival ~~requirements~~ requirements, in addition to the required planting, on a case-by-case basis as determined by the Planning Director.
- (4) Surviving tree must be at least 1" caliper to receive full credit toward survival requirements. Reinforcement planting must be 1" trees. All trees to be accepted must be have a healthy and have the main leader intact with ~~a~~ minimal deer browse.
- (5) Surviving tree must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees. All trees to be accepted must be have a healthy and have the main leader intact with ~~a~~ minimal deer browse.
- (6) Shrubs should be evenly distributed over the planting area and among the trees. On a case-by-case basis, shrubs may be substituted with native trees particularly when there is evidence of deer predation or high incidence of non-native and invasive plants and materials.

F. Tree Save Plans.

- (1) Development applications on tracts which ~~include significant, specimen or champion trees, or impact significant, specimen or champion trees, including those on adjoining properties,~~ are ~~may be~~ required to submit a tree save plan.
- (2) Preserving specimen or champion trees, and stands of trees which are valuable for compatibility reasons, must be included in these plans. If the loss of these trees is shown to be unavoidable, replacement must be required.
- (3) The replacement ratio must be determined in the following manner:
  - (a) Specimen ~~and~~ champion trees must be replaced by ~~landscaping~~ planting plan which may be required to include planting or transplanting of large trees;
  - (b) ~~significant~~ Significant tree stands must be replaced ~~so as~~ to replace the function of the stand; for instance, trees which provided screening must be replaced in sufficient kind and number to perform the same function.
- (4) The tree save plans must show on-site or off-site trees 6" DBH or greater located along the limits of disturbance if the proposed activity would impact the critical root zone of those trees, and must identify methods to preserve and protect on-site or off-site trees along the limits of disturbance regardless of tree size. those trees.

G. Credit Toward Afforestation and Reforestation for Landscaping and Tree Save

(1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.

(1)(2) ~~Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements.~~

(3) Newly planted landscape trees, within landscape areas must be ~~2-3"~~ minimum caliper ~~stock~~ to be counted toward requirements.

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

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

(3)(6) Afforestation areas may be established as tree cover if the Planning Board or Planning Director, as applicable, find that tree cover is appropriate. Instances where it may be appropriate to satisfy afforestation requirements using tree cover include:

- (i) developments in urban areas;
- (ii) redevelopments;
- (iii) high-density residential developments;
- (iv) commercial and industrial developments;
- (v) high density mixed-use developments; and
- (vi) some institutional areas.

(4)(7) Landscaping ~~(with native plants)~~, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements as follows:

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

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

- (a) sites with tree cover requirements per subsection (3):
  - (i) landscaping areas or retained tree stands of any size ~~maymust~~ receive full credit for their area;

- (ii) individual landscape trees which are retained ~~may~~must receive full credit for the protected area of canopy at 20-years; and
- (iii) individual trees, or tree stands, which are retained ~~may~~must receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;
- (b) sites with forest cover requirements:
  - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide ~~may~~must receive full credit for their area;
  - (ii) landscaping areas or retained tree stands which are at least 2,500 square feet in size or less than 35 feet wide ~~may~~must receive one quarter credit for their area;
  - (iii) individual non-priority landscape trees ~~may~~must receive one quarter credit for the projected area of their canopy at 20-years;
  - (iv) individual trees which are retained ~~may~~must receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
  - (v) the total credit from these areas must not exceed twenty percent of the overall afforestation requirement for a site.

## 22A.00.01.09 Forest Conservation Plan Requirements

### A. Preliminary Forest Conservation Plans.

- (1) Development applications that need more than one ~~approval~~approval must~~may~~ submit a preliminary forest conservation plan in conjunction with the first approval. The plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.
- (2) A preliminary forest conservation plan must contain the following:
  - (a) the shape and dimension of lots, showing locations of any existing structures and improvements, including paved areas;
  - (b) locations and dimension of all existing and proposed rights-of-way, setback, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as parts of the development application must be identified);
  - (c) location of building restriction lines and areas to be conserved including environmental floodplains, wetlands and stream buffers;
  - (d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;

- (e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, including acreage, with appropriate justification and proposed long-term protection methods (a conceptual grading plan and/or a more detailed tree survey may be required to determine the feasibility of proposed retention areas);
- (f) proposed locations of afforestation and reforestation areas, including acreage, and mitigation trees, if required;
- (g) a table containing the following information:
  - (i) acreage of tract;
  - (ii) acreage of the tract remaining part of an agricultural use;
  - (iii) acreage of road and utility rights-of-way which will not be improved as part of the development application;
  - (iv) acreage of total existing forest;
  - (v) acreage of forest in priority retention areas;
  - ~~(iv)~~(vi) acreage of forest not in priority retention areas;
  - (vii) acreage of total forest retention in priority retention areas;
  - ~~(v)~~(viii) acreage of total forest retention not in priority retention areas
  - (ix) acreage of total forest cleared in priority retention areas;
  - ~~(vi)~~(x) acreage of forest cleared not in priority retention areas;
  - ~~(vii)~~(xi) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;
  - ~~(viii)~~(xii) acreage of forest retained, cleared, and planted within wetlands;
  - ~~(ix)~~(xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;
  - ~~(x)~~(xiv) acreage of forest retained, cleared, and planted within stream buffers;
  - ~~(xi)~~(xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
  - ~~(xii)~~(xvi) linear feet average width of stream buffer provided; and
- (h) a forest conservation worksheet showing calculation of forest conservation requirements.

B. Final Forest Conservation Plans

- (1) A final forest conservation plan must be based on final site grading, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application and in conjunction with the preliminary forest conservation plan.
- (2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h) updating by final grading, a final forest conservation plan must include:

- (a) conceptual or final grading plans which include building locations and footprint, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;
- (b) a limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;
- (c) a survey of trees with a diameter of 24 inches and greater diameter at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas), ~~and within 50'~~ on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table. ~~and delineation of their critical root zones (survey of other trees may be required when necessary to determine the feasibility of proposed retention areas);~~
- (d) retention areas including forest, tree stands and other individual trees to be saved including acreage;
- (e) an afforestation and/or reforestation planting plan, if required, which contains:
  - (i) location and acreage of areas to be planted;
  - (ii) an analysis of the suitability of the site for planting and a description of necessary methods;
  - (iii) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;
  - (iv) a plant materials table including size of plants to be installed and quantities;
  - (v) planting and inspection schedule which is tied to the construction sequence for the project;
  - ~~(vi)~~ a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c);
  - ~~(vii)~~ (vi) calculation for financial security which is to be provided in an amount equal to the estimated cost of the required planting and maintenance, or equal to the fee in lieu for the area to be planted; and
  - ~~(viii)~~ (vii) a maintenance and management ~~monitoring~~ agreement; and
- (f) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;
- (g) a protection plan which shows:

- (i) location of temporary ~~and permanent~~ protection devices, ~~as appropriate,~~ which must be installed if clearing, grading, or construction occurs within 50 feet of a retention area boundary;
- (ii) stockpile areas and borrow pits;
- (iii) specifications and details for the protection device;
- (iv) a narrative of stress reduction or other measures which are needed for specific trees; ~~and~~
- (v) a field inspection schedule pursuant to Section 22A.00.01.10;
- ~~(v) location of permanent protection devices; and~~
- (vi) an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of the critical root zone is impacted; and
- (vii) An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when 30% or more of the critical root zone is impacted. calculation of the fee in lieu of reforestation or afforestation, if appropriate.
- (h) identification of how the off-site planting requirements will be met either by making a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite;
- (i) If off-site planting is going to occur, the forest conservation plan must off-site planting, if required, which includes the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 22A.00.01.08E(2).

C. Noticing Requirements for Forest Conservation Plans.

Applicants that require ~~must acquire approval of a forest conservation plan must a site plan or subdivision plan that must also obtain approval of a forest conservation plan must follow the noticing requirements identified in Chapter 50/259.00.01.04 for site plans or subdivision plans in Chapter 50/59.00.01.04.~~

(1)

- Applicants that must acquire approval of a conditional use/special exception, mandatory referral, or sediment control plan that must also obtain approval of a forest conservation plan must follow the noticing requirements for forest conservation plans in Chapter 50/59.00.01.04.
- Applicants that must acquire approval of a major amendment to a forest conservation plan must follow the noticing requirements for forest conservation plans in Chapter 50/59.00.01.04.

**22A.00.01.10 Inspections**

- A. The Planning Department must conduct field inspections of a site subject to an approved forest conservation plan as follows:
- (1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should be to field verify the limits of clearing specified on the approved plan, authorize necessary adjustments, and to authorize necessary stress reduction measures and installation of protection devices);
  - (2) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);
  - (3) after completion of all construction activities to determine the level of compliance with the ~~provisions of the forest conservation~~ approved plan;
  - (4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specification);
  - ~~(5)~~ after required reforestation and afforestation planting has been completed to verify that the planting is acceptable and to begin being the the required 2-year maintenance and management period begins;
  - ~~(5)(6)~~ Two years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and
  - ~~(6)(7)~~ At the end of the 2-year maintenance and management period agreement to determine the level of compliance with provisions of the planting plan and, if appropriate, authorize release of any financial security.
- B. The applicant must:
- ~~a.~~ Requested these inspections by the applicant at the designated points.
  - ~~b.~~ Submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31<sup>st</sup> and April 30<sup>th</sup> of each year for the duration of the maintenance and management period.
- C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10.-A.
- ~~B-D.~~ For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

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

- A. A request for exemption from forest conservation [plan](#) requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law must be in writing to the Planning Director.
- B. The following information must be provided as part of an exemption request:
- (1) An application form;
  - (2) A written request detailing how the exemption applies to the proposed plan;
  - (3) A Natural Resources Inventory, [or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed](#), prepared per Section 22.00.01.06~~a(1)~~ and the guidelines in the latest version of [Environmental Guidelines: Guidelines for Environmental Management of Development in Montgomery County, Maryland](#) (MNCPPC);
  - (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
  - (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.
- C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
- [\(1\) single lot exemptions per subsection 22A-5\(a\) of the Forest Conservation Law if information is a site submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show plan which shows existing and proposed topography and forest boundaries is submitted with the exemption request; and](#)
  - [\(2\) agricultural exemptions per subsection 22A-5\(b\) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries;](#)
  - [\(3\) commercial logging and timber harvesting exemptions per subsection 22A-5\(d\) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and](#)
  - [\(1\)\(4\) applications for other exemptions, if the site being developed does not contain any forest, specimen or significant trees, existing conservation easements, or environmentally sensitive natural features, and a plan showing existing features and topography is submitted with the exemption request.](#)
- [D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.](#)
- ~~D-E.~~ [The Planning Board, or Planning Director,](#) may require a person failing to file an exemption request per section 22A-4 of the Forest Conservation Law, or found in noncompliance with an exemption or a declaration of intent to:

- (1) Submit a Forest Conservation Plan and Meet the requirements in ~~this subtitle~~ the Forest Conservation Law for a regulated activity;
- (2) Pay a noncompliance fee;
- (3) Be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; ~~and/or~~
- (4) Submit File a request to be n-exempt from submitting a forest conservation plan ~~on with the Planning Director~~ Board.

F. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file an exemption by a person required d to file is a knowing violation of this subtitle.

E.G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation ~~automatically expires without notices expired.~~

### 22A.00.01.12 Declaration of Intent

- A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation Plan ~~Law~~. A declaration of intent is required for the following exemptions from submitting a forest conservation plan;
  - (1) An activity conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner, if the activity complies with the requirements of activity does not result in the cumulative cutting, clearing or grading of more than 20,000 square feet of forest, and complies with the other requirements of subsection 22A-5(a) of the Forest Conservation Law;
  - (2) An agricultural activity that complies with subsection 22A-5(b) of the Forest Conservation Law;
  - ~~(1)~~(3) A commercial logging and timber harvesting operation that complies with subsection 22A-5(d) of the Forest Conservation Law;
  - (4) A real estate transfer subject to subsection 22A-5(m) of the Forest Conservation Law.
  - (5) A minor subdivision that complies with subsection 22A-5(n) of the Forest Conservation Law;
  - ~~(2)~~(6) An activity involving the demolition of an existing structure ~~Need to add the demolition~~ one that complies with subsection 22A-5(x) of the Forest Conservation Law.
- B. The declaration of intent must provide Park and Planning Department staff with access to the property to verify compliance with the declaration.
- C. The declaration of intent is effective in effect for 5 years after the date the Planning Director confirms the exemption from submitting a forest conservation plan ~~approves~~ defined in the declaration of intent ~~the exemption~~.

- D. The filing of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:
- (1) Does not conflict with the purpose of any existing declaration of intent; and
  - (2) Complies with the applicable requirements for an exempted activity.
- E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:-
- (1) the exemption immediately terminates without any action by the Planning Board; ~~and~~
  - (2) the Planning Director may require approval of a Forest Conservation Plan for the property; and
  - ~~(2)(3)~~ the Planning Director, or Planning Board may take other enforcement actions, including those listed -under Section 22A-17(a) of Article II of the Forest Conservation Law.
- F. An applicant may apply for a regulated activity on the area of the property not covered under the declaration of intent if the requirements of ~~this Section 22A-5 subtitle~~ are satisfied.

~~G. Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of intent may be required as part of a sediment and erosion control plan which ensures that the activity meets the exemption conditions in subsection 22A-5(b) and (d) of the Forest Conservation Law.~~

### **22A.00.01.13 Amendment to Forest Conservation Plan and Exemptions from Submitting a Forest Conservation Plan Declaration of Intent**

- A. Forest Conservation Plan Amendments.
- (1) Minor amendments which do not result in more than a total of 5,000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and substituting one area of forest, for retention of another of equal or greater size and value.
  - (2) Major amendments which entails:
    - (a) -more than a total of 5,000 square feet of additional forest clearing must be approved by Planning Board or Planning Director (depending on who approved the original plan), ~~or-~~
    - (b) Removal of any conservation easement must be approved by the Planning Board.
  - ~~(1) (3) Notice of each major plan amendment and opportunity for comment must be given to adjacent property owners as part of the Planning Board or Planning Director approval process.~~

B. ~~Declaration of Intent. Exemptions from Submitting and Forest Conservation Plan~~CP

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

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

A. Maintenance Agreements.

- (1) A person required to conduct afforestation or reforestation under this regulation and the Forest Conservation Law must include in the forest conservation plan a binding maintenance agreement for a minimum length of ~~2-5 years~~ ~~outside of Special Protection Areas and 5 years within a Special Protection Area.~~ ~~unless reduced pursuant to Section 22A-12(g)(h)(1) of the Forest Conservation Law.~~ ~~The binding maintenance agreement for forest conservation plans within Special Protection Areas must have a minimum length of 5 years and cannot be reduced.~~
- (2) The ~~maintenance~~ agreement must be submitted and approved by the Planning Director before the start of ~~any land disturbing activities.~~ ~~the 2-year maintenance period.~~
- (3) The maintenance agreement must detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest.
- (4) The ~~“obligee,”~~ ~~or~~ person required to conduct the afforestation or reforestation, ~~after this referred to as the “obligee,”~~ must present evidence of a legal right to implement the proposed maintenance agreement on a selected ~~site property~~ by providing:
- (a) an executed deed conveying title to a selected ~~site property~~ to the obligee;
  - (b) an executed conservation easement agreement;
  - (c) written evidence of the landowner’s consent to the use of a selected ~~site property~~;
  - (d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected ~~site property~~; or
  - (e) other written evidence of a possessory or ownership interest in a selected ~~site property~~.
- (5) The Planning ~~Director Board~~ must be a signatory to the maintenance agreement, or must be designated a third-party beneficiary of the agreement.
- ~~(6) The Planning Board must not release required financial security or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.~~
- ~~(6)~~ The maintenance agreement must provide ~~Park and~~ Planning Department staff with access to the property to verify compliance with the ~~Forest Conservation P~~afforestation or reforestation planting plan.
- (7) ~~If the plantings have not meet the survival requirements established in section 22A.00.01.08 or required control of non-native and invasive vegetation, control established in section~~

22A.00.01.08, reinforcement plantings and/or additional non-native invasive control will be required, and the maintenance period may be extended. If

B. Bonding.

- (1) Financial security must be provided per subsection 22A-12(i) of the Forest Conservation Law.
- (2) Financial security must ~~The full amount must~~ be provided before authorization is granted to begin any clearing, and grading, demolition, or land disturbing activities.
- ~~(3)~~ The value of the financial security must equal the in-lieu fee applicable at the time of land disturbance, or be based on a cost estimate, approved by the Planning Director, for implementing the planting and maintenance of trees and shrubs (including mitigation trees), and control of non-native and invasive plants within the planting areas. may be reduced after it is submitted if the obligee proves to the satisfaction of the Planning Director that the costs to complete the mitigation project have been reduced.
- ~~(4)~~ The Planning Director must determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation by considering the following:
  - ~~(a)~~ the size of the afforestation or reforestation area;
  - ~~(b)~~ the method of afforestation or reforestation used;
  - ~~(c)~~ plant survival and overall plant health within the planting areas;
  - ~~(d)~~ the cost of planting or replacement materials;
  - ~~(e)~~ the project's maintenance costs; and
  - ~~(f)~~ other relevant factors.
- ~~(5)~~ (3) The financial security must be in force until all measure for reforestation, afforestation, and maintenance requirements have been met to the satisfaction of the Planning Director; or until the in lieu fees have been paid.
- ~~(6)~~ (4) A surety bond or other alternative form of security must not be canceled by the surety, bank or other issuing entity unless both of the following conditions are satisfied:
  - (a) the surety notifies the Planning ~~Board~~ Director and the applicant of its intent to cancel the bond, in writing, by registered mail, not less than 90 days before cancellation; and
  - (b) at least 45 days before the cancellation date indicated in the notice, the applicant files a commitment from a surety, bank, or other issuing entity to provide a substitute security which must take effect on the cancellation date indicated in the notice.
- ~~(7)~~ (5) Release of part or all of the financial security may be authorized by the Planning Department enforcement and monitoring staff after planting has been done. Any remaining financial security must never be less than be at least 50 percent, or greater, than the in-lieu fee that was in effect at the time of the first land disturbance.

~~(8)~~(6) An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.

~~(9)~~(7) Planning Department enforcement and monitoring staff must determine whether a partial release should occur, after planting has occurred, and how much, based on the following factors:

(a) evidence of deer browse on existing trees and forest;

~~(a)~~(b) adherence to the planting plan;

(c) condition of the planted material;

~~(b)~~(d) time of year when the planting has occurred and whether or not watering will occur;

~~(c)~~(e) size of planting stock; and

~~(d)~~(f) provisions of the protection and maintenance plan, including required control of non-native invasive vegetation.

~~(10)~~(8) Planning staff must release the financial security if the applicant requests a final inspection and the Planning staff determines that survival requirements have been met after the two or five year at the end of the maintenance period.

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

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

(1) Long-term protective measures may include, but are not limited to:

(a) Conservation easements or covenants ~~Covenants running with the land;~~

(b) Deed restrictions; and

~~(b)~~

~~(c) Dedication to M-NCPPC Parks as a conservation area. Conservation easements; and~~

~~(d)(c) Land trusts.~~

(2) A forest management plan may be included as part of a long-term protective agreement if the Planning Director finds it is consistent with County forest conservation objectives.

~~A. An applicant may include in a forest conservation plan another long-term protective measure if the Planning Board or Planning Director finds that the measure will provide for the long term protection of the areas retained, afforested, or reforested under this subtitle.~~

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

July 20, 2020

The Honorable Sidney Katz  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Mr. Katz:

On July 16, 2020 the Montgomery County Planning Board recommended 4-0, with Commissioner Partap Verma absent, to transmit to the County Council changes to the Forest Conservation - Trees Regulation (Chapter 22A of the County code). Since 2001 numerous changes to the Forest Conservation Law have occurred to keep current with changes to the zoning code; subdivision of land code; the State's enabling legislation, the Forest Conservation Act; and to clarify certain sections of Chapter 22A of the County Code. However, the Forest Conservation - Trees Regulation has not changed since 2001. Changes are needed to the Forest Conservation - Trees Regulation to incorporate current Montgomery Planning staff practice and to address the changes that have already been incorporated into the Forest Conservation Law.

Attached is a complete copy of the proposed changes to the Forest Conservation & Trees Regulation that the Planning Board would like to be introduced jointly with the proposed changes to the Forest Conservation Law (Chapter 22A of the County code), which was transmitted to the County Council on February 21, 2020, along with a copy of the staff report dated May 21, 2020. Members of the Planning Board and staff of the Maryland-National Capital Park & Planning Commission are available to assist the Council in its review of the proposed changes to the Forest Conservation - Trees Regulation.

Sincerely,



Casey Anderson  
Chair

cc: Pam Dunn  
Amanda Mihill  
Karen Pecoraro  
Kristin Taddei

Attachments:

- A. Proposed 2018-2020 Changes to Forest Conservation Trees Regulation\_Attachment A (Clean Copy)
- B. Proposed 2018-2020 Changes to Forest Conservation Trees Regulation\_Attachment B (Track Changes)
- C. 5.21.2020 Staff Report\_Forest Conservation Trees Regulation Proposed 2018-2020 Changes

**Fiscal Impact Statement**  
**Expedited Bill 36-20, Forest Conservation - Amendment**

**1. Legislative Summary**

Expedited Bill 36-20 makes several changes to the County's Forest Conservation Law. The following are notable changes made by the legislation:

- Extend the required maintenance period on reforestation and afforestation from two years to five years;
- apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
- exempt agricultural activities from certain delineation conservation requirements only if the property remains in agricultural use;
- exempt local government highway construction activities from certain delineation and conservation requirements;
- clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- provide that an exemption granted expires after 5 years if development has not begun;
- increase the length of the binding maintenance agreement required in forest conservation plans;
- alter the variance process; and
- generally, amend the Forest Conservation Law. The Planning Board also transmitted proposed regulations to implement Bill 36-20.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

Bill 36-20E is not estimated to impact revenues.

Regarding expenditures, the bill is not expected to have a significant fiscal impact until the third year after implementation, when afforestation and reforestation efforts must continue rather than ending in the second year under current law. Using information provided by staff within the Departments of Environmental Protection (DEP) and Department of Transportation (DOT), the two departments will spend approximately \$225,000 more by the fifth year after implementation under the Bill. These estimates were based on costs for similar reforestation maintenance in recent years and then expanded to cover the extended timeframes required in this Bill. Assumptions include:

- DEP currently installs approximately 20 acres of reforestation per year;
- DOT currently installs approximately 10 acres of reforestation per year;
- the maintenance cost per acre is approximately \$2,500 per year; and
- thus, by the fifth year following enactment (FY25) there would be 90 additional acres requiring maintenance than under current law and at a cost of \$225,000 per year.

It should be noted that both departments typically use capital budget funds to implement projects subject to the Forest Conservation Law, including required mitigation efforts.

As discussed in more detail under Question #10, actual costs will vary based on the number of projects installed in a given year that have mitigation requirements under the Forest Conservation Law, as well as with the need for treatments to maintain the sites. This estimate includes administrative costs, equal to about one third of the total cost, to implement and inspect the additional maintenance.

While the costs to the County will increase for the extended maintenance, the costs to the County related to the variance procedures will decrease if Bill 36-20 is passed. Currently, all requests for variances from certain aspects of the Law are referred to the County Arborist, who is employed by DEP. The proposed language will change this referral and nearly eliminate reviews of variance requests by the County Arborist. DEP estimated that savings could range between 15 and 20 percent of the County Arborist's time. This estimate is based on the average number of variance requests received and the average time required to review each request over the past 11 years.

The Maryland-National Capital Park and Planning Commission (M-NCPPC) would also be affected by Bill 36-20. M-NCPPC reports that many parts of the legislation will impact expenditures, but are difficult to calculate. For example, the change in exemptions to expire after five years could impact existing projects that have an exemption, but may take several years to implement. When M-NCPPC seeks another exemption, other changes under Bill 36-20 could make it more expensive. The Commission also sees the extension of forest afforestation and reforestation as having the largest impact.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

Over the next six fiscal years, the estimated cumulative cost to the County could be up to \$675,000. The following table shows the average cost per year to extend the maintenance of afforestation and reforestation plantings from the current requirement of two years to the proposed requirement of five years given the estimate of 30 acres of reforestation each year. Increases in costs will not occur until the third year after the installation of any project approve after the legislation is adopted, or no earlier than FY23 if adopted in FY21.

	<b>FY21</b>	<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>Total Cost FY21-26</b>
<b>New Acres Reforested</b>	30	30	30	30	30	30	
<b>Acres in the 3rd, 4th, and 5th Year of Maintenance</b>	0	0	30	60	90	90	270
<b>Cost per Acre</b>	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
<b>Projected Increase to County</b>	\$0	\$0	\$75,000	\$150,000	\$225,000	\$225,000	\$675,000

Bill 36-20 is not expected to have an impact on revenues.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

**6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable.

**7. An estimate of the staff time needed to implement the bill.**

Bill 36-20 is not expected to require staff time to implement. Currently, maintenance is performed by contractors. Additional staff time needed to monitor the work is minimal and can be absorbed within the existing complement.

**8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

**9. An estimate of costs when an additional appropriation is needed.**

Bill 36-20 does not require additional appropriation to implement, including to fund the estimated impacts that start the third year after implementation. The additional cost could be absorbed within existing CIP projects, though doing so would divert funding from new afforestation or reforestation efforts to maintenance. New appropriation would be needed at that time to maintain previously budgeted levels of new afforestation or reforestation efforts.

**10. A description of any variable that could affect revenue and cost estimates.**

The additional costs estimated to extend the maintenance from two years to five years could vary widely from project to project and year to year. The following are variables that could significantly change the cost per acre of a given project:

- The physical site conditions like soils and slope;
- the presence of non-native invasive plants prior to reforestation;
- the local population of white-tailed deer; and
- weather conditions during the five years of maintenance.

These variables are largely outside of the County's control but could have significant impacts on costs to maintain the plantings to meet Bill 36-20's requirements.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

There are a number of other provisions in Bill 36-20 that would likely increase costs to the County, but are difficult to estimate. For example, the bill requires additional notification to the public during the review process, though further evaluation is needed to understand how it differs from current practice.

Another provision is one that shortens the length of time that exemptions remain valid from no deadline to five years. It often takes several years for both DEP and DOT to plan and fund projects, and if it exceeds the five-year limit there could be additional delays and costs, but it is unknown how many projects this could impact. M-NCPPC identified this as a potential impact as well.

**12. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

**14. The following contributed to and concurred with this analysis:**

Frank Dawson, Department of Environmental Protection

Jim Stiles, Department of Environmental Protection

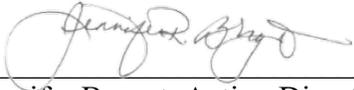
Laura Miller, Department of Environmental Protection

Tim Cupples, Department of Transportation

Dan Sheridan, Department of Transportation

Nancy Steen, Maryland National-Capital Park and Planning Commission

Richard H. Harris, Office of Management and Budget



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Jennifer Bryant, Acting Director  
Office of Management and Budget

9/21/20

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Date

# Expedited Bill 36-20

## Forest Conservation – Amendments

### SUMMARY

Overall, the Office of Legislative Oversight (OLO) expects the enactment of Expedited Bill 36-20 to have an insignificant economic impact on private organizations and residents in Montgomery County.

### BACKGROUND

Expedited Bill 36-20 would amend the County’s Forest Conservation Law by incorporating, both, obligatory changes in Maryland Senate Bill 234 and recommendations from the Montgomery County Planning Department.<sup>1</sup> More specifically, the Expedited Bill would make the following changes:

- “(1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- (2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law;
- (3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
- (4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
- (5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- (6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- (7) provide that an exemption granted expires after 5 years if development has not begun;
- (8) increase the length of the binding maintenance agreement required in forest conservation plans; [and]
- (9) alter the variance process.”<sup>2</sup>

<sup>1</sup> Kristin Taddei and Mark Pfefferle, Staff Report: Forest Conservation Law Amendments – Modifications, February 20, 2020, Montgomery County Planning Department, Montgomery County, Maryland.

<sup>2</sup> Montgomery County Council, Expedited Bill 36-20, Forest Conservation – Amendments, Introduced on July 29, 2020, Montgomery County, Maryland.

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## **METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES**

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on OLO staff judgment.

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## **VARIABLES**

Variables that could affect the economic impacts of enacting Expedited Bill 36-20 are the following:

- Operating costs for developers; and
  - Rates of forest change.
- 

## **IMPACTS**

### **Businesses, Non-Profits, Other Private Organizations**

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

Local developers would be the primary organizational actors affected by enacting Expedited Bill 36-20. While some of the amendments to the Forest Conservation Law may impact some developers' operating costs, OLO believes that these impacts would be minor. Moreover, some of these impacts would be beyond the scope of the Council's control because they would occur through amendments in the Expedited Bill that state law obligates the County to incorporate. Beyond operating costs, OLO sees no direct connection between enacting Expedited Bill 36-20 and the Council's other priority indicators, namely workforce, property values, capital investment, taxation policy, economic development, and competitiveness.<sup>3</sup>

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### **Residents**

Workforce, property values, income, taxation policy, economic development, etc.

While conserving local forests has economic benefits for residents,<sup>4</sup> OLO does not believe that the amendments in Expedited Bill 36-20 would significantly impact rates of forest change. For this reason, OLO believes that enacting Expedited Bill 36-20 would have an insignificant impact on County residents in terms of the Council's priority indicators, namely workforce, property values, income, taxation policy, and economic development.

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## **WORKS CITED**

Montgomery County Council. Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments. Enacted on July 30, 2019. Montgomery County, Maryland.

Montgomery County Council. Expedited Bill 36-20, Forest Conservation – Amendments. Introduced on July 29, 2020. Montgomery County, Maryland.

Montgomeryplanning.org. "Why Trees Are So Cool!" Montgomery County Planning Department. Montgomery County, Maryland,

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<sup>3</sup> For the Council's priority indicators, see Montgomery County Council, Bill 10-19 Legislative Branch – Economic Impact Statements – Amendments, Enacted on July 30, 2019, Montgomery County, Maryland, 3.

<sup>4</sup> Montgomeryplanning.org, "Why Trees Are So Cool!," Montgomery County Planning Department, Montgomery County, Maryland, <https://montgomeryplanning.org/wp-content/uploads/2020/04/Tree-infographic-english-and-spanish.pdf>.

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<https://montgomeryplanning.org/wp-content/uploads/2020/04/Tree-infographic-english-and-spanish.pdf>.

Taddei, Kristin and Mark Pfefferle. Staff Report: Forest Conservation Law Amendments – Modifications. February 20, 2020. Montgomery County Planning Department. Montgomery County, Maryland.

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## **CAVEATS**

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO's endorsement of, or objection to, the bill under consideration.

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## **CONTRIBUTIONS**

Stephen Roblin (OLO) drafted this economic impact statement after consultation with Kristin Taddei, Forest Conservation Planner Coordinator, with the Montgomery County Planning Department.



MARYLAND LEAGUE  
OF CONSERVATION VOTERS

September 22<sup>nd</sup>, 2020

The Honorable Montgomery County Council  
100 Maryland Avenue,  
Rockville, Maryland 20850

Re: Support Expedited Bill 36-20, Forest Conservation with amendment

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**Maryland League of  
Conservation Voters**

Ed Hatcher, Board Chair  
Maris St. Cyr, Vice Chair  
Michael Davis, Treasurer  
Hon. Virginia Clagett  
Stuart Clarke  
Candace Dodson-Reed  
Verna Harrison  
Melanie Hartwig-Davis  
Lynn Heller  
Hon. Steve Lafferty  
Bonnie Norman  
Katharine Thomas

**Maryland League of  
Conservation Voters  
Education Fund**

Chuck Porcari, Board Chair  
Joy Blackwood  
Lance Davis  
Larissa Johnson

Kim Coble  
Executive Director

30 West Street  
Suite C  
Annapolis, MD 21401

410.280.9855  
mdlcv.org  
marylandconservation.org

Dear Montgomery County Council,

On behalf of the Maryland League of Conservation Voters, I urge you to support Expedited Bill 36-20, Forest Conservation with amendment. This bill is an important step forward, and we urge the council to take the program even further, following the example of Frederick, Anne Arundel, and Howard Counties towards truly innovative, ambitious improvements and truly ensure no net loss of forests, so that Montgomery County will remain a leader in environmental policy.

Bill 36-20 makes several modest improvements that we support including;

- The increase of binding maintenance agreements from two years to five. This will allow saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.
- The application of the forest conservation law to contiguous lots.
- New protections of root zones.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Several minor administrative improvements that will help the Department of Planning do their job of stewarding forests and this program.

There is one provision we urge you to amend. We do not want to see mature, priority forests removed so that a developer can get stormwater credit for installing a stream restoration project. The existing forest would provide more environmental benefits. Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around restoration projects are not exempted from forest conservation protections.

It is important to note, if this bill passes even with the suggested amendment, Montgomery County will continue to lose forests. We urge the County Council to review the recent progressive changes made by several other counties to their Forest Conservation programs. In the last nine months Frederick County, Anne Arundel County, and Howard County strengthened their protections beyond what bill 36-20 will do. Frederick County passed two bills that are models. The Forest Resource Ordinance Bill 20-08 creates no net loss by specifying that every acre of forest removed is replanted. This is significantly more protection than what Montgomery County is proposing which is as little as one acre is replanted for every four acres removed. Frederick County also uses the state minimum 'standard calculation' in the rare cases where this complex formula would restore more forests.

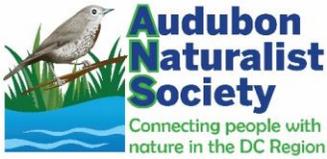
Additionally, Frederick County's Zoning Ordinance Amendment (Bill #20-07) is even more innovative because it protects the county's most valuable forests. Bill 20-07 excluded sensitive areas from the density calculation of how many units can be built there. This encourages developers to redevelop sites and chose locations more in line with smart growth principles.

Maryland LCV supports Expedited Bill 36-20 with the recommended amendment to the stream restoration exemption in that it will provide modest improvements to Montgomery County's Forest Conservation program and is a small step in the right direction. However, we do want to stress that even if bill 36-20 is passed, the county will still be losing forests and we encourage the County Council to put forward no net loss legislation either as an amendment to this legislation or as a new bill in the near future. The work to protect Montgomery County's forest is not done, and we hope to work with the council to ensure no net loss of forests in the county. If you have any questions or would like to discuss this or any forest policy anywhere in Maryland in more detail, please do not hesitate to contact Ben Alexandro at [balexandro@mdlcv.org](mailto:balexandro@mdlcv.org) or call 845-596-9634.

Sincerely,

A handwritten signature in blue ink that reads "Ben Alexandro". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Benjamin Alexandro  
Water Program Director  
Maryland League of Conservation Voters  
Maryland LCV Education Fund



September 18, 2020

**Written Testimony in support for Expedited Bill 36-20 – Forest Conservation Amendments for Montgomery County Council hearing on September 22, 2020<sup>1</sup>**

**Denisse Guitarra**

Maryland Conservation Advocate, Audubon Naturalist Society (ANS)

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Dear Montgomery County Council,

For 123 years, Audubon Naturalist Society has inspired people to enjoy, learn about and protect nature. We thank the Montgomery County Council for the opportunity to provide testimony for the proposed amended regulations as part of the county's Forest Conservation Law. ANS has been following closely the development of the Forest Conservation amendments since they were first introduced in the Montgomery County Planning Department and Board earlier this year.<sup>2</sup>

ANS applauds Montgomery County for its long history as a leader in forward-thinking planning and environmental conservation. The County has long been a leader in the region and the nation in protecting and restoring the natural resources that make this county such a desirable place to live, work, and play. Specifically for Bill 36-20, we see this an important step in the right direction towards a more climate resilient county which prioritizes forest protection. Under today's climate crisis, preserving and protecting our forests should be a priority. Trees provide shade which mitigate urban heat island effects, serve as home to wildlife, and their roots prevent soil erosion. We in particular support the following provisions in Bill 36-20:

- The increase of binding maintenance agreements to five years instead of two gives saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.

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<sup>1</sup> Bill 36-20- Forest Conservation – Amendments. Available: [https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2675\\_1\\_10805\\_Bill\\_36-2020\\_Introduction\\_20200729.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2675_1_10805_Bill_36-2020_Introduction_20200729.pdf)

<sup>2</sup> ANS and SWPN testify on Forest Conservation Regulations at the Planning Board. June and July 2020. [http://conservationblog.anshome.org/blog/moco\\_forest\\_conservation/](http://conservationblog.anshome.org/blog/moco_forest_conservation/)

Woodend Sanctuary | 8940 Jones Mill Road, Chevy Chase, Maryland 20815 | 301-652-9188

Rust Sanctuary | 802 Childrens Center Road, Leesburg, Virginia 20175 | 703-669-0000

[anshome.org](http://anshome.org)

- Requiring a Forest Conservation Plan for contiguous lots of forest even if individually the lots are too small themselves to qualify.
- New protections for critical root zones as all too often we see trees die because the roots around the trunk are destroyed without cutting down the tree.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Ensuring that agricultural FCP exemptions are granted for actual commercial agriculture, not other non-farm uses in agricultural areas.

In addition, ANS has the following recommendations, and asks the Council to take these in consideration in order to strengthen our county's current existing forest conservation law:

- **Montgomery County Forest Conservation Law should have a net zero forest loss by following a 1:1 replanting ratio.** Council should either amend Bill 36-20 or soon study and introduce a new one focusing on this critically important and forward-looking issue.
  - Other nearby jurisdictions, including Frederick County, have passed and currently have stronger forest protections than Montgomery County.
  - The recent success of Frederick County's FCL was due to a twofold win which mandates a 1:1 tree replanting rate plus requires zoning changes that protects sensitive environmental areas that protect features like steep slopes, where the forest roots are preventing landslides, and floodplains where the forests are slowing and cleaning floodwaters.<sup>3 4 5</sup>
- **Ensure that priority forests are protected in stream restorations.**
  - There is one provision that could create an unattended consequence. We do not want to see mature, priority forests chopped down just so a developer can get stormwater credit for installing a stream restoration where the existing forest would provide more environmental benefits. Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around stream restoration projects are not exempted from forest conservation protections.
- **Change the ephemeral streams definition to extend protections beyond Ten Mile Creek.**
  - This legislation limits the definition of ephemeral streams to Ten Mile Creek because the accompanying regulations cite the 2020 Environmental Guidance document. Bill 36-20 could adopt its own definition of ephemeral stream. In fact,

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<sup>3</sup> Frederick's Forest Conservation Law changes 2020. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/324596/Protecting-Frederick-County-Environmental-Resources>

<sup>4</sup> Forest Resource Ordinance Bill 20-08 will stop net forest loss. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326561/Bill-No-20-08-Amendments-to-Chapter-1-21-of-the-Frederick-County-Code-Forest-Resource-Ordinance>

<sup>5</sup> Zoning Ordinance Amendments Overview Bill #20-07. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326560/Bill-No-20-07-Amendments-to-Chapter-1-19-of-the-Frederick-County-Code-Zoning-Ordinance>

the guidance does provide a general definition that could be copied over. Only in “Appendix E” does the guidance limit its applicability to TMC.

In addition, we ask to set up a work group to continue to explore and find ways to strengthen Montgomery County’s Forest Conservation Law in a way that is most applicable and equitable to all residents in the county before the T&E committee meeting on Bill 26-20. We also recommend moving the upcoming T&E committee meeting on Bill 36-20 from its scheduled October 7<sup>th</sup> meeting <sup>6</sup> to a future date in November to give us more time to research and reach a net zero forest loss in Montgomery County.

We thank the Montgomery County Council for taking in consideration our comments and look forward to continuing to be engaged and be part of the Forest Conservation Law changes.

Sincerely,

Denisse Guitarra  
MD Conservation Advocate  
Audubon Naturalist Society

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<sup>6</sup> T&E committee meeting on Bill 36-20 on October 7, 2020. Available:  
[https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/current\\_com\\_agm.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/current_com_agm.pdf)

Sidney Katz  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

**Re: Bill 36-20 Proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code**

Dear President Katz and Councilmembers,

On behalf of the Maryland Building Industry Association (MBIA), this letter is in response to proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code. MBIA appreciates the opportunity to comment on the proposed changes and acknowledges that some of the proposed changes are necessary to comply with recent changes to the States enabling legislation and to update language to be compatible with other County regulations. During this process, we met with planning staff and offered our feedback, as well as concerns with the proposal as outlined below. Most, if not all were addressed by the Planning Board, we offer the following comments on the proposed changes:

**1- 22A.00.01.03- Definitions**

- a. Proposed definition 17) “Environmental Buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of *Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.
  - i. This is a new definition that does not appear in any other regulation or approved policy document that we are aware of. Please confirm that the intent of this definition is to replace what has been referred to as an “Expanded Stream Buffer” and if there is any other reason for creating the new definition.
  - ii. Floodplain appears to be out of place in the sentence and should follow the other specific environmental features listed.
  - iii. The definition is confusing in that it appears that an expanded stream buffer must include ephemeral channels because they are defined in the Environmental Guidelines. Ephemeral Channels are only regulated in the Ten Mile Creek Limited Master Plan Amendment. Please revise the definition to state “Environmental Buffer” means perennial or intermittent streams and their associated buffers; wetlands and their associated buffers; hydraulically steep slopes; and floodplains according to the latest version of Guidelines for the

Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or ephemeral streams/channels as applicable in an appropriate master plan.”

- b. Proposed definition 34) “Landscaping Credit” means areas shown on a forest conservation plan that are not forest but will receive credit toward a site’s reforestation or afforestation requirements. The forest conservation plan must show dimensions and details for tree planting and landscaping areas. Any planting for landscape credit to meet the forest conservation requirements must use native plants.
  - i. Please add “or cultivars of native plants” to be consistent with the revisions that were made to the forest conservation law in 2018.
- c. Proposed definition 46) “Priority planting area” means areas in which planting must occur unless those areas are not present.
  - i. Please clarify that planting in a priority planting area must occur only if required to meet the mitigation requirements of the forest law. This is consistent with the revisions that were made to the forest conservation law in 2018.
- d. Existing definition 52) (Renumbered) “Specimen Tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.
  - i. This is a subjective definition and the revision to this regulation provides an opportunity to define a specimen tree using the objective criteria provided in section 22A.00.01.07 (5) of this code to define which trees will be regulated as specimen trees. These objective criteria are also how the County has, in practice, determined which trees are specimens in the review and approval of NRI’s and Forest Conservation Plans and Exemptions. The objective criteria are as follows:
    - 1. an individual tree, and its critical root zone, with one or more of the following characteristics:
      - a. a tree that is part of a historic site or associated with a historic structure;
      - b. a tree designated as a national, state, or County champion tree;
      - c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
      - d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

## 2- 22A.00.01.05 Application

- a. Proposed revision to A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans for or regulated activities. The revision adds a number (7) which states, “clearing or grading conducted on two or more platted contiguous lots that collectively total 40,000 square feet or larger that are graded at the same time and where sediment control is required under Chapter 19 of the County Code.”
  - i. Please clarify the intent of this language and revise to make clear that this is when one sediment control plan is requested to cover more than one platted lot where sediment control/stormwater management measures will not be provided for each individual platted lot.
- b. Proposed revision to B. The general procedure for meeting the requirements of Chapter 22A for these plans is: The revision adds language to number (3) (a) which states, lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and protected habitats wherever practical;”
  - i. Please define “protected habitats” to clarify that these are known publically documented habitats for rare, threatened or endangered species or habitats identified during the preparation of an approved natural resources inventory.

### 3- 22A.00.01.06 Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements

- a. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (5) which states, “ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) or appropriate master plan;”
  - i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels to have buffers. Ephemeral Channel buffers are only required in the Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove “Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)” and only refer only to an applicable master plan.
- b. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (12) which states, “Trees that are specimens for their species;”
  - i. This is subjective and should be removed. In practice a specimen tree is defined using the objective criteria provided in section 22A.00.01.07 (5) of this code to

define which trees will be regulated as a specimen trees. These objective criteria are how the County has, in practice, determined which trees are specimens in the review and approval of NRI's and Forest Conservation Plans and Exemptions. The objective criteria are as follows:

1. an individual tree, and its critical root zone, with one or more of the following characteristics:
  - a. a tree that is part of a historic site or associated with a historic structure;
  - b. a tree designated as a national, state, or County champion tree;
  - c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
  - d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

**4- 22A.00.01.07 Priorities for Retention**

- a. Proposed revision to A. The following areas trees, shrubs, plants, and specific areas are considered the highest priority for retention areas for and protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered: The revision adds a number (3) which states, "trees, shrubs, or plants identified on the list of rare, threatened, or endangered species;"
  - i. Please identify that this is the State of Maryland list of Rare, Threatened or Endangered Species.

**5- 22A.00.01.08- General Forest Conservation Plan Provisions**

- a. Proposed revisions to A. that reads "In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The forest conservation law specifies percentages of all forest sites which, at a minimum should be preserved. Applicants should strive to maximize forest retention whenever practical."
  - i. A Natural Resource Inventory requires that all forest stands delineated on a site be prioritized for retention. Please revise the paragraph to clarify that "Applicants should strive to maximize retention of high priority forest stands whenever practical."
- b. Proposed revisions to E. (2) (b) that states, "establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Guidelines for*

*Environmental Management for Development in Montgomery County, Maryland (MNCPPC)."*

- i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels have buffers. Ephemeral Channels are only regulated in Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove "Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)" and only refer only to an applicable master plan.
- c. Proposed revisions to E. (3) (c) after the chart, notes 4 and 5. Both notes require no deer browse for surviving planted tree stock.
  - i. Please revise to allow minimal deer browse as trees can survive with minimal deer browse.
- d. Proposed addition to F. Tree Save Plans (4) that states," The tree save plans must identify methods to preserve and protect on-site or off-site trees along the limits of disturbance regardless of tree size."
  - i. Please clarify the intent of this language. All trees with a diameter at breast height of 24" and greater within 100' of the property are shown on a tree save plan. Is there a minimum tree size this intends to protect? Are there general notes or standards that could be placed on the plan that could achieve desired protections? As trees gets smaller, so do their critical root zones and it is not always possible to access adjacent properties due to lack of permission or physical barriers making accurately locating small trees difficult. Please clarify and consider what is required by law when tree limbs and critical root zones encroach onto an adjacent property.

**6- 22A.00.01.09 Forest Conservation Plan Requirements**

- a. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vi) that states a tree protection plan must show, "an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when the critical root zone is impacted;"
  - i. Please revise as discussed during the 2018 revision to be required only when saving trees with greater than 30% critical root zone impacts.
- b. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vii) that states, "An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when the critical root zone is impacted."
  - i. Please clarify under what circumstances this would apply.
- c. Proposed addition C. Noticing Requirements for Final Forest Conservation Plans that states, "Applicants that require approval of a forest conservation plan must follow the noticing requirements in Chapter 50/9.00.01.04"
  - i. Please clarify that this does not apply to forest conservation exemptions or forest conservation plans associated with another development application

that requires public noticing. This is for standalone forest conservation plans only.

We appreciate the opportunity to provide comments on the proposed changes and are available to answer any questions that you may have. If you have any further questions, please contact Griffin Benton, MBIA - Director of Government Affairs at [gbenton@marylandbuilders.org](mailto:gbenton@marylandbuilders.org) or 202-815-4239.

Respectfully,

Matthew Wessel, PLA, ISA Certified Arborist  
Chair, MBIA Environmental Committee



September 18, 2020

Montgomery County Council  
100 Maryland Avenue,  
Rockville, Maryland 20850

Re: Support Expedited Bill 36-20, Forest Conservation with amendment

Dear Montgomery County Council,

Rock Creek Conservancy recommends that you support Expedited Bill 36-20, Forest Conservation with amendment. This bill reflects a reasonable, if modest, improvement to the county's Forest Conservation practices. The Conservancy encourages Montgomery County to follow the example of Frederick, Anne Arundel, and Howard Counties by ensuring no net loss of forests, so that Montgomery County will continue to lead on environmental matters.

Bill 36-20 makes some improvements that we support including;

- The increase of binding maintenance agreements from two years to five. This will allow saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.
- The application of the forest conservation law to contiguous lots.
- New protections of root zones.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Several minor administrative improvements that will help the Department of Planning do their job of stewarding forests and this program.

**The Conservancy encourages amendment of the following provision:** We do not want to see mature, priority forests removed so that a developer can get stormwater credit for installing a stream restoration project. Maintaining existing forest would provide greater environmental

benefits. **Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around restoration projects are not exempted from forest conservation protections.**

Even with the suggested amendment, Montgomery County will continue to lose forests. The Conservancy strongly recommends the County Council review the recent progressive changes made by other counties to their Forest Conservation programs. In the last nine months Frederick County, Anne Arundel County, and Howard County strengthened their protections beyond what bill 36-20 will do. Frederick County passed two bills that are models: **The Forest Resource Ordinance Bill 20-08 creates no net loss by specifying that every acre of forest removed is replanted.** This is significantly more protection than what Montgomery County is proposing which is as little as one acre is replanted for every four acres removed. Frederick County also uses the state minimum 'standard calculation' in the rare cases where this complex formula would restore more forests.

Additionally, Frederick County's Zoning Ordinance Amendment (**Bill #20-07**) is even more **innovative because it protects the county's most valuable forests. Bill 20-07 excluded sensitive areas from the density calculation of how many units can be built there.** This encourages developers to redevelop sites and chose locations more in line with smart growth principles.

Rock Creek Conservancy supports Expedited Bill 36-20 with the recommended amendment to the stream restoration exemption in that it will provide modest improvements to Montgomery County's Forest Conservation program and is a small step in the right direction. However, we stress that even if bill 36-20 is passed, the county will still be losing forests. We encourage the County Council to put forward no net loss legislation either as an amendment to this legislation or as a new bill in the near future.

Rock Creek Conservancy is a nonprofit organization that restores Rock Creek and its parklands as a natural oasis for all people to appreciate and protect. The watershed's forests help manage stormwater runoff and provide climate resilience for our residents. We appreciate your work to restore and protect those forests.

Thanks for your consideration,

A handwritten signature in black ink, appearing to read "Jim Brun". The signature is written in a cursive, flowing style.

Jeanne Braha, Executive Director



18 September 2020

Montgomery County Council  
100 Maryland Avenue,  
Rockville, Maryland 20850

Re: Support Expedited Bill 36-20, Forest Conservation with amendment

Dear Montgomery County Council,  
Friends of Sligo Creek recommends that you support Expedited Bill 36-20, Forest Conservation with amendment. This bill is a reasonable step forward. However, we suggest the council go further, and follow the example of Frederick, Anne Arundel, and Howard Counties and ensure no net loss of forests, so that Montgomery County will remain a leader in environmental policy.

Bill 36-20 makes some modest improvements that we support including;

- The increase of binding maintenance agreements from two years to five. This will allow saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.
- The application of the forest conservation law to contiguous lots.
- New protections of root zones.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Several minor administrative improvements that will help the Department of Planning do their job of stewarding forests and this program.

**One provision we urge you to amend:** We do not want to see mature, priority forests removed so that a developer can get stormwater credit for installing a stream restoration project. Existing forest would provide more environmental benefits. **Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around restoration projects are not exempted from forest conservation protections.**

Even with the suggested amendment, Montgomery County will continue to lose forests. We urge the County Council to review the recent progressive changes made by other counties to their Forest Conservation programs. In the last nine months Frederick County, Anne Arundel County, and Howard County strengthened their protections beyond what bill 36-20 will do. Frederick County passed two bills that are models. **The Forest Resource Ordinance Bill 20-08 creates no net loss by specifying that every acre of forest removed is replanted.** This is significantly more protection than what Montgomery County is proposing which is as little as one acre is replanted for every four acres removed. Frederick County also uses the state minimum 'standard calculation' in the rare cases where this complex formula would restore more forests.

Additionally, Frederick County's Zoning Ordinance Amendment (**Bill #20-07**) is even more innovative because it protects the county's most valuable forests. **Bill 20-07 excluded sensitive areas from the density calculation of how many units can be built there.** This encourages developers to redevelop sites and chose locations more in line with smart growth principles.

Friends of Sligo Creek supports Expedited Bill 36-20 with the recommended amendment to the stream restoration exemption in that it will provide modest improvements to Montgomery County's Forest Conservation program and is a small step in the right direction. However, we do want to stress that even if bill

36-20 is passed, the county will still be losing forests and we encourage the County Council to put forward no net loss legislation either as an amendment to this legislation or as a new bill in the near future.

Friends of Sligo Creek is a nonprofit community organization dedicated to protecting, improving, and appreciating the ecological health of Sligo Creek Park and its surrounding watershed. Forests are a high priority for us.

Thanks for your consideration.

Kit Gage

Kit Gage  
Advocacy Director  
Friends of Sligo Creek  
PO Box 11572  
Takoma Park MD 20913

[advocacy@fosc.org](mailto:advocacy@fosc.org)  
[www.friendsofsligocreek.org](http://www.friendsofsligocreek.org)





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

September 22, 2020

Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Good afternoon. I am Kristin Taddei, Forest Conservation Planner Coordinator with Montgomery Planning, speaking today on behalf of the Montgomery County Planning Board (Planning Board).

On February 20, 2020 the Planning Board voted 3-0 to transmit to the County Council required and recommended amendments to Chapter 22A of the County Code. The Planning Board is supportive of these changes as they would align the county Forest Conservation Law with the enabling state law, amended per Senate Bill 234, which became effective on October 1, 2019. Montgomery County is obligated to incorporate these changes. Therefore, a number of proposed changes incorporate a revised preferred sequence for fulfilling reforestation and afforestation requirements, ensuring that forest mitigation banks are considered before fee-in-lieu if the requirement is above a threshold.

Other proposed changes are needed to clarify and update sections of the Forest Conservation Law. For example, one proposed change would close a loophole that currently allows certain developments over 40,000 square feet to not meet the applicability requirements of the Forest Conservation Law as they should. Another change would increase the length of the binding maintenance agreement required as part of a forest conservation plan from “at least 2 years” to “at least 5 years” to align it with the length of binding maintenance agreements in special protection areas, and because most binding maintenance agreements are extended to at least 5 years before being released.

On July 16, 2020 the Planning Board voted 4-0 to transmit to the County Council recommended changes to the Forest Conservation and Trees Regulation of Chapter 22A of the Code of Montgomery County Regulations. This regulation has not been updated since 2001. Therefore, the Planning Board is also supportive of these changes which would keep the regulation current with the state and county Forest Conservation Law and incorporate current staff practice.

Thank you,

*Kristin Taddei*

Kristin Taddei  
Forest Conservation Planner Coordinator  
Intake & Regulatory Coordination Division  
Montgomery County Planning Department

Dear Montgomery County Council,

We write in support of Expedited Bill 36-20, Forest Conservation, with one exception.

The environment that we all depend upon is in crisis. That is not hyperbole. Global warming and pollution are destroying communities and causing death and disease across the United States. Montgomery County is not immune from this worsening catastrophe. Our lives and health and property are as much at risk as those of the people of California or Louisiana. In this month alone, Montgomery County suffered extreme rainfall and widespread flooding. <https://www.washingtonpost.com/weather/2020/09/10/dc-area-forecast-tropical-downpours-today-could-produce-areas-flooding/>

Trees are a necessary means of saving our environment. They clean our air, prevent stormwater runoff, and preserve our topsoil. Tree canopies provide shade and habitat for birds and other wildlife. Moreover, as you are all aware, each and every one of us is living under great stress in these trying times, when the pandemic has upended all our lives. The presence of trees in our community helps people cope with this stress and improves our mental and physical health.

For these reasons, we urge you to pass Expedited Bill 36-20, Forest Conservation. The more trees we have in Montgomery County – in particular, the more mature trees with large canopies, as opposed to small decorative trees that offer minimal benefits – the better. The last thing Montgomery County should do is destroy mature trees and the benefits they bring. You must save as many mature trees as possible.

That said, we wholeheartedly agree with these comments from the Maryland League of Conservation Voters: “We do not want to see mature, priority forests removed so that a developer can get stormwater credit for installing a stream restoration project. The existing forest would provide more environmental benefits. Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around restoration projects are not exempted from forest conservation protections.”

Thank you for your consideration of our comments.

Yours truly,

Michael Gurwitz & Maria Schmit  
8607 Springvale Road  
Silver Spring, MD 20910

Hello,

My name is Walter Weiss, and I live at 7941 Deepwell Drive Bethesda 20817. I strongly favor passage of Expedited Bill 36-20, Forest Conservation - Amendments

Protecting the trees and forests in our county is important for quality of life, stormwater runoff, and to fight climate change. This bill moves the county in the right direction,

Sincerely,

Walter Weiss



September 18, 2020

**Written Testimony in support for Expedited Bill 36-20 – Forest Conservation Amendments for Montgomery County Council hearing on September 22, 2020<sup>1</sup>**

**Denisse Guitarra**

Maryland Conservation Advocate, Audubon Naturalist Society (ANS)

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Dear Montgomery County Council,

For 123 years, Audubon Naturalist Society has inspired people to enjoy, learn about and protect nature. We thank the Montgomery County Council for the opportunity to provide testimony for the proposed amended regulations as part of the county's Forest Conservation Law. ANS has been following closely the development of the Forest Conservation amendments since they were first introduced in the Montgomery County Planning Department and Board earlier this year.<sup>2</sup>

ANS applauds Montgomery County for its long history as a leader in forward-thinking planning and environmental conservation. The County has long been a leader in the region and the nation in protecting and restoring the natural resources that make this county such a desirable place to live, work, and play. Specifically for Bill 36-20, we see this an important step in the right direction towards a more climate resilient county which prioritizes forest protection. Under today's climate crisis, preserving and protecting our forests should be a priority. Trees provide shade which mitigate urban heat island effects, serve as home to wildlife, and their roots prevent soil erosion. We in particular support the following provisions in Bill 36-20:

- The increase of binding maintenance agreements to five years instead of two gives saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.

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<sup>1</sup> Bill 36-20- Forest Conservation – Amendments. Available:

[https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2675\\_1\\_10805\\_Bill\\_36-2020\\_Introduction\\_20200729.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2675_1_10805_Bill_36-2020_Introduction_20200729.pdf)

<sup>2</sup> ANS and SWPN testify on Forest Conservation Regulations at the Planning Board. June and July 2020.

[http://conservationblog.anshome.org/blog/moco\\_forest\\_conservation/](http://conservationblog.anshome.org/blog/moco_forest_conservation/)

Woodend Sanctuary | 8940 Jones Mill Road, Chevy Chase, Maryland 20815 | 301-652-9188

Rust Sanctuary | 802 Childrens Center Road, Leesburg, Virginia 20175 | 703-669-0000

[anshome.org](http://anshome.org)

- Requiring a Forest Conservation Plan for contiguous lots of forest even if individually the lots are too small themselves to qualify.
- New protections for critical root zones as all too often we see trees die because the roots around the trunk are destroyed without cutting down the tree.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Ensuring that agricultural FCP exemptions are granted for actual commercial agriculture, not other non-farm uses in agricultural areas.

In addition, ANS has the following recommendations, and asks the Council to take these in consideration in order to strengthen our county's current existing forest conservation law:

- **Montgomery County Forest Conservation Law should have a net zero forest loss by following a 1:1 replanting ratio.** Council should either amend Bill 36-20 or soon study and introduce a new one focusing on this critically important and forward-looking issue.
  - Other nearby jurisdictions, including Frederick County, have passed and currently have stronger forest protections than Montgomery County.
  - The recent success of Frederick County's FCL was due to a twofold win which mandates a 1:1 tree replanting rate plus requires zoning changes that protects sensitive environmental areas that protect features like steep slopes, where the forest roots are preventing landslides, and floodplains where the forests are slowing and cleaning floodwaters.<sup>3 4 5</sup>
- **Ensure that priority forests are protected in stream restorations.**
  - There is one provision that could create an unattended consequence. We do not want to see mature, priority forests chopped down just so a developer can get stormwater credit for installing a stream restoration where the existing forest would provide more environmental benefits. Please amend 6 22A-5. Exemptions (v)(1) to ensure that priority forests around stream restoration projects are not exempted from forest conservation protections.
- **Change the ephemeral streams definition to extend protections beyond Ten Mile Creek.**
  - This legislation limits the definition of ephemeral streams to Ten Mile Creek because the accompanying regulations cite the 2020 Environmental Guidance document. Bill 36-20 could adopt its own definition of ephemeral stream. In fact,

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<sup>3</sup> Frederick's Forest Conservation Law changes 2020. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/324596/Protecting-Frederick-County-Environmental-Resources>

<sup>4</sup> Forest Resource Ordinance Bill 20-08 will stop net forest loss. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326561/Bill-No-20-08-Amendments-to-Chapter-1-21-of-the-Frederick-County-Code-Forest-Resource-Ordinance>

<sup>5</sup> Zoning Ordinance Amendments Overview Bill #20-07. Available from:

<https://frederickcountymd.gov/DocumentCenter/View/326560/Bill-No-20-07-Amendments-to-Chapter-1-19-of-the-Frederick-County-Code-Zoning-Ordinance>

the guidance does provide a general definition that could be copied over. Only in “Appendix E” does the guidance limit its applicability to TMC.

In addition, we ask to set up a work group to continue to explore and find ways to strengthen Montgomery County’s Forest Conservation Law in a way that is most applicable and equitable to all residents in the county before the T&E committee meeting on Bill 26-20. We also recommend moving the upcoming T&E committee meeting on Bill 36-20 from its scheduled October 7<sup>th</sup> meeting <sup>6</sup> to a future date in November to give us more time to research and reach a net zero forest loss in Montgomery County.

We thank the Montgomery County Council for taking in consideration our comments and look forward to continuing to be engaged and be part of the Forest Conservation Law changes.

Sincerely,

Denisse Guitarra  
MD Conservation Advocate  
Audubon Naturalist Society

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<sup>6</sup> T&E committee meeting on Bill 36-20 on October 7, 2020. Available:  
[https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/current\\_com\\_agm.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/cm/current_com_agm.pdf)



September 24, 2020

Montgomery County Council  
100 Maryland Avenue  
Rockville Maryland

**Re: Expedited Bill 36-20, Forest Conservation with amendment  
Position: Support**

Dear Montgomery County Council,

The Sierra Club Montgomery County Group supports Expedited Bill 36-20, Forest Conservation, with amendments. While the bill makes modest improvements to the existing Forest Conservation Law, and is a step in the right direction, we urge the Council to strengthen the bill to ensure No Net Loss of forests. We also urge the Council to remove the exemption for removal of priority forests for stream restoration projects where trees provide more environmental benefits, and to extend the protection of ephemeral streams beyond the Ten Mile Creek watershed.

No Net Loss of forests has also been a priority goal of the Sierra Club Maryland Chapter in efforts to strengthen the state Forest Conservation Act. It has now been achieved in Frederick, Anne Arundel and Howard Counties. Two bills recently passed in Frederick County provide models that could be adopted in Montgomery County. One of these requires no net loss by requiring the replanting of every acre of forest that is removed, compared to Montgomery County which only requires that one acre be replanted for every four acres removed. In addition, the Frederick County Zoning Ordinance Amendment (Bill #20-07) excludes sensitive areas from the density calculation used to determine of how many units can be built in a particular area. This encourages developers to redevelop sites and choose locations more in line with smart growth principles.

We also ask the Council to amend 22A-5 Exemptions (v)(1) to ensure that mature, priority forests, which provide greater environmental benefits than stream restoration projects, are not removed to install such projects for the purpose of obtaining stormwater credits.

Extending the protection of ephemeral streams beyond Ten Mile Creek would further protect drinking water and help ensure buildings are not placed in the path of stormwater flows. At the very least, these should be identified in the planning stage rather than after the developer is long gone. Ephemeral streams are those where water only flows during and immediately after rain fall because the channel is higher than the water table. As the channel deepens, a stream can become



intermittent or perennial because it would then also be groundwater fed. They may also transport a disproportionate share of pollutants and are drinking water source areas.<sup>1</sup>

Protection of ephemeral streams with a buffer area is presently limited to the Ten Mile Creek watershed because the legislation relies on a definition of ephemeral streams in the 2020 Environmental Guidance document that limits its applicability. However, bill 36-20 could easily adopt its own definition of ephemeral streams.

Bill 36-20 makes several modest improvements that we support without amendment. These include:

- The increase of binding maintenance agreements from two years to five. This will allow saplings a chance to grow past the reach of browsing deer and have a better chance of survival. Montgomery County has significant deer populations and invasive species which can decimate entire groves of saplings.
- The application of the forest conservation law to contiguous lots.
- New protections of root zones.
- Changes to the fee in lieu system and assurances that there is a focus on retention and forest banking.
- Several minor administrative improvements that will help the Department of Planning do their job of stewarding forests and this program.

Lastly, we urge the Council to consider moving the date of the T&E Committee hearing on Bill 36-20 to a later date and forming a workgroup so that more comprehensive changes can be considered for strengthening Montgomery County's Forest Conservation Law, consistent with achieving the goal of No Net Loss of Forests.

Sincerely,

Shruti Bhatnagar  
Chair  
Sierra Club Montgomery County Group  
Shruti.bhatnagar@mdsierra.org

Sylvia S. Tognetti  
Water Issue Lead  
Sierra Club Montgomery County Group  
Sylvia.tognetti@mdsierra.org

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<sup>1</sup> [U.S. EPA 2009 Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S.](#)

Sidney Katz  
President, Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

**Re: Bill 36-20 Proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code**

Dear President Katz and Councilmembers,

On behalf of the Maryland Building Industry Association (MBIA), this letter is in response to proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code. MBIA appreciates the opportunity to comment on the proposed changes and acknowledges that some of the proposed changes are necessary to comply with recent changes to the States enabling legislation and to update language to be compatible with other County regulations. During this process, we met with planning staff and offered our feedback, as well as concerns with the proposal as outlined below. Most, if not all were addressed by the Planning Board, we offer the following comments on the proposed changes:

**1- 22A.00.01.03- Definitions**

- a. Proposed definition 17) “Environmental Buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of *Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.
  - i. This is a new definition that does not appear in any other regulation or approved policy document that we are aware of. Please confirm that the intent of this definition is to replace what has been referred to as an “Expanded Stream Buffer” and if there is any other reason for creating the new definition.
  - ii. Floodplain appears to be out of place in the sentence and should follow the other specific environmental features listed.
  - iii. The definition is confusing in that it appears that an expanded stream buffer must include ephemeral channels because they are defined in the Environmental Guidelines. Ephemeral Channels are only regulated in the Ten Mile Creek Limited Master Plan Amendment. Please revise the definition to state “Environmental Buffer” means perennial or intermittent streams and their associated buffers; wetlands and their associated buffers; hydraulically steep slopes; and floodplains according to the latest version of Guidelines for the

Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or ephemeral streams/channels as applicable in an appropriate master plan.”

- b. Proposed definition 34) “Landscaping Credit” means areas shown on a forest conservation plan that are not forest but will receive credit toward a site’s reforestation or afforestation requirements. The forest conservation plan must show dimensions and details for tree planting and landscaping areas. Any planting for landscape credit to meet the forest conservation requirements must use native plants.
  - i. Please add “or cultivars of native plants” to be consistent with the revisions that were made to the forest conservation law in 2018.
- c. Proposed definition 46) “Priority planting area” means areas in which planting must occur unless those areas are not present.
  - i. Please clarify that planting in a priority planting area must occur only if required to meet the mitigation requirements of the forest law. This is consistent with the revisions that were made to the forest conservation law in 2018.
- d. Existing definition 52) (Renumbered) “Specimen Tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.
  - i. This is a subjective definition and the revision to this regulation provides an opportunity to define a specimen tree using the objective criteria provided in section 22A.00.01.07 (5) of this code to define which trees will be regulated as a specimen trees. These objective criteria are also how the County has, in practice, determined which trees are specimens in the review and approval of NRI’s and Forest Conservation Plans and Exemptions. The objective criteria are as follows:
    - 1. an individual tree, and its critical root zone, with one or more of the following characteristics:
      - a. a tree that is part of a historic site or associated with a historic structure;
      - b. a tree designated as a national, state, or County champion tree;
      - c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
      - d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

## 2- 22A.00.01.05 Application

- a. Proposed revision to A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans for or regulated activities. The revision adds a number (7) which states, “clearing or grading conducted on two or more platted contiguous lots that collectively total 40,000 square feet or larger that are graded at the same time and where sediment control is required under Chapter 19 of the County Code.”
  - i. Please clarify the intent of this language and revise to make clear that this is when one sediment control plan is requested to cover more than one platted lot where sediment control/stormwater management measures will not be provided for each individual platted lot.
- b. Proposed revision to B. The general procedure for meeting the requirements of Chapter 22A for these plans is: The revision adds language to number (3) (a) which states, lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and protected habitats wherever practical;”
  - i. Please define “protected habitats” to clarify that these are known publically documented habitats for rare, threatened or endangered species or habitats identified during the preparation of an approved natural resources inventory.

**3- 22A.00.01.06 Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements**

- a. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (5) which states, “ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) or appropriate master plan;”
  - i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels to have buffers. Ephemeral Channel buffers are only required in the Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove “Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)” and only refer only to an applicable master plan.
- b. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (12) which states, “Trees that are specimens for their species;”
  - i. This is subjective and should be removed. In practice a specimen tree is defined using the objective criteria provided in section 22A.00.01.07 (5) of this code to

define which trees will be regulated as a specimen trees. These objective criteria are how the County has, in practice, determined which trees are specimens in the review and approval of NRI's and Forest Conservation Plans and Exemptions. The objective criteria are as follows:

1. an individual tree, and its critical root zone, with one or more of the following characteristics:
  - a. a tree that is part of a historic site or associated with a historic structure;
  - b. a tree designated as a national, state, or County champion tree;
  - c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
  - d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

**4- 22A.00.01.07 Priorities for Retention**

- a. Proposed revision to A. The following areas trees, shrubs, plants, and specific areas are considered the highest priority for retention areas for and protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered: The revision adds a number (3) which states, "trees, shrubs, or plants identified on the list of rare, threatened, or endangered species;"
  - i. Please identify that this is the State of Maryland list of Rare, Threatened or Endangered Species.

**5- 22A.00.01.08- General Forest Conservation Plan Provisions**

- a. Proposed revisions to A. that reads "In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The forest conservation law specifies percentages of all forest sites which, at a minimum should be preserved. Applicants should strive to maximize forest retention whenever practical."
  - i. A Natural Resource Inventory requires that all forest stands delineated on a site be prioritized for retention. Please revise the paragraph to clarify that "Applicants should strive to maximize retention of high priority forest stands whenever practical."
- b. Proposed revisions to E. (2) (b) that states, "establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Guidelines for*

*Environmental Management for Development in Montgomery County, Maryland (MNCPPC)."*

- i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels have buffers. Ephemeral Channels are only regulated in Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove "Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)" and only refer only to an applicable master plan.
- c. Proposed revisions to E. (3) (c) after the chart, notes 4 and 5. Both notes require no deer browse for surviving planted tree stock.
  - i. Please revise to allow minimal deer browse as trees can survive with minimal deer browse.
- d. Proposed addition to F. Tree Save Plans (4) that states," The tree save plans must identify methods to preserve and protect on-site or off-site trees along the limits of disturbance regardless of tree size."
  - i. Please clarify the intent of this language. All trees with a diameter at breast height of 24" and greater within 100' of the property are shown on a tree save plan. Is there a minimum tree size this intends to protect? Are there general notes or standards that could be placed on the plan that could achieve desired protections? As trees gets smaller, so do their critical root zones and it is not always possible to access adjacent properties due to lack of permission or physical barriers making accurately locating small trees difficult. Please clarify and consider what is required by law when tree limbs and critical root zones encroach onto an adjacent property.

**6- 22A.00.01.09 Forest Conservation Plan Requirements**

- a. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vi) that states a tree protection plan must show, "an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when the critical root zone is impacted;"
  - i. Please revise as discussed during the 2018 revision to be required only when saving trees with greater than 30% critical root zone impacts.
- b. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vii) that states, "An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when the critical root zone is impacted."
  - i. Please clarify under what circumstances this would apply.
- c. Proposed addition C. Noticing Requirements for Final Forest Conservation Plans that states, "Applicants that require approval of a forest conservation plan must follow the noticing requirements in Chapter 50/9.00.01.04"
  - i. Please clarify that this does not apply to forest conservation exemptions or forest conservation plans associated with another development application

that requires public noticing. This is for standalone forest conservation plans only.

We appreciate the opportunity to provide comments on the proposed changes and are available to answer any questions that you may have. If you have any further questions, please contact Griffin Benton, MBIA - Director of Government Affairs at [gbenton@marylandbuilders.org](mailto:gbenton@marylandbuilders.org) or 202-815-4239.

Respectfully,

Matthew Wessel, PLA, ISA Certified Arborist  
Chair, MBIA Environmental Committee

**DOT and DEP Combined Comments on Bill 36-20E**  
**December 2020**

The following are comments based on Bill 36-20E as introduced in the County Council staff packet:

1. Line 143, Section 22A-5(v): The proposed language would require the County to enter into a binding agreement with the Planning Department when the County is working on county-owned land. Therefore, adding an exemption from this requirement in Section 22A-5(v) is recommended. The following sentence should be added where paragraph (3) ends at Line 143:

County projects on County property are exempt from the requirements of this paragraph.

2. Line 155, Section 22A-6(a): The proposed added language provides for tree save requirements based on impacts to a “significant, specimen, or champion tree”. While the terms ‘specimen’ and ‘champion’ trees are defined, ‘significant’ is not defined. Adding a definition for this term is recommended.
3. Line 164, Section 22A-6(b): Given that highway construction, stream restoration, and stormwater management projects are not exempt based on the conditions of the natural resources, no time period should apply to these exemptions. However, if the proposed language is adopted, then a very simplified recertification process should be developed.
4. Lines 167-171, Section 22A-6(c): The County understands the intent of the proposed language and agrees that adjustments to the language could be useful. The County also understands that the language proposed by Planning is being withdrawn following comments from the State. However, DEP extends the offer to work closely with the Planning Department to propose new language in the future that will help ensure desired outcomes of harvest activities.
5. Line 201, Section 22A-11(a)(3): The proposed added language is not clear regarding the requirement for providing Notice of Forest Conservation Plan to MNCPPC or where it is specified in the regulations. The proposed revisions to the regulations are unclear as well. Revisions should be considered to clarify in both the law and regulations.
6. Line 211, Section 22A-11(e)(2): The proposed deletion of language may result in the removal of any deadline (time limit) for the Planning Director to review a forest

conservation plan submitted as part of a mandatory referral. Timeframes and deadlines are essential for both applicants and Planning Department. This revision is not recommended since the existing language provides for a finite timeframe of 45 days for the review of a mandatory referral.

7. Lines 464-471, Section 22A-21(c): The County supports the proposed changes to the variance referrals to the County Arborist, except for endangered, historic, and champion trees. Additionally, the County would like to maintain the option for the Planning Board to refer any variance to the County Arborist. Therefore, the County recommends the following language:

(c) Referral to other agencies ~~for non 22A-12(b)(3) variance requests.~~

- (1) The Planning Director must send a copy of each variance request related to Section 22A-12(b)(3)(A) and (B) to the County Arborist and any other appropriate agency for a written recommendation before the Board acts on the request.
- (2) The Planning Director may send a copy of each variance request related to Section 22A-12(b)(3)(C) to the County Arborist and any other appropriate agency for a written recommendation before the Board acts on the request.

And then on Line 485, Section 22A-30 should change as follows:

(4) review variance requests and reports under Article II but not including those under 22A-12(b)(3)(C);

8. Line 293, Section 22A-12(h). The Planning Board's proposed amendment to increase the duration of maintenance agreements from 2 to 5 years is supported by the County because the need for additional maintenance to overcome the negative impacts of non-native invasive plants and an overabundance of deer is essential to establishing reforestation. However, the additional maintenance will increase demand on County resources, both staff time and financial resources. The County will provide the information that is available regarding the costs in the fiscal impact statement, but it may be difficult to fully estimate the additional resources needed.