COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:

(1) clarify, and limit certain exemptions to, forest conservation requirements;
(2) revise certain standards to require greater forest preservation;
(3) strengthen requirements for forest planting to increase success of reforestation;
(4) authorize forest mitigation banking;
(5) simplify certain plans, plan amendments, and calculations; and
(6) generally amend County law governing forest conservation requirements.

By amending
Montgomery County Code
Chapter 22A, Forest Conservation - Trees

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Chapter 22A is amended as follows:

* * *


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

[(a)] *Afforestation* means the establishment of forest or tree cover in accordance with this Chapter on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.

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

[(c)] *Agricultural and resource area* means an undeveloped area zoned for a density of less than or equal to one dwelling unit per 5 acres.

[(d)] *Commercial and industrial uses* means manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yards, and parking areas.

[(e)] *Commercial logging and timber harvesting operation* means the cutting and removing of tree stems from a site for commercial purposes, leaving root mass intact.

[(f)] *Declaration of intent* means a signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

(1) is for purposes exempted under this Chapter; and
(2) will not circumvent the requirements of this Chapter.

[((g)] Development plan means a plan or an amendment to a plan approved under Division 59-D-1 of [the Zoning Ordinance] Chapter 59.

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

[((i)] District Council means the County Council in its capacity, under Article 28 of the Maryland Code, to act on planning and zoning matters for the Maryland-Washington Regional District.

[((j)] Floodplain (100-year) means an 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 a 100-year flood.

[((k)] Forest means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area [of which is] 10,000 square feet or greater and at least 50 feet wide. However, minor portions of a forest stand which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall stand. Forest includes:
(1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and

(2) forest areas that have been cut but not cleared.

Forest does not include an orchard[s].

[(l)] Forest conservation means the retention of existing forest or the creation of new forest at the levels set by the Planning Board or Planning Director.

[(m)] Forest conservation fund means a special fund maintained by the County to be used for purposes specified in Section 22A-27.

[(n)] Forest conservation plan means a plan approved under Article II [of this Chapter].

[(o)] Forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of \( \frac{1}{4} \) acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed.

[(p)] Forest cover means the area of a site meeting the definition of forest. Forest mitigation banking means the intentional preservation, or creation of forests undertaken expressly to provide credits for afforestation or reforestation requirements.

[(q)] Forest stand delineation means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land-disturbing activities.

[(r)] High-density residential area means an area zoned for densities greater than one dwelling unit per 40,000 square feet, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.
[(s)] Institutional development area means land occupied by uses such as schools, colleges, and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, golf courses, recreation areas, parks, and cemeteries. In this Chapter, institutional development does not include a religious institution which is a permitted use in any zone and would not require a special exception.

[(t)] Land disturbing activities has the same meaning as in Chapter 19. Linear project means a project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise to be constructed or improved as part of an application for subdivision approval, such as electricity, gas, water, sewer, communications, trains, pedestrians, and vehicles. A linear project may traverse fee simple properties through defined boundaries or through easement rights.

[(u)] Lot means for the purpose of this Chapter a [unit] tract of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined under Section [5-1601 of the Natural Resources Article of the Maryland Code] 50-1, without an approved forest stand delineation and forest conservation plan.

[(v)] Mandatory referral means the required review by the Planning Board of projects or activities to be undertaken by governmental agencies and private and public utilities under Section 7-112 of Article 28 of the Maryland Code.

[(w)] Medium-density residential means an area zoned for [densities] a density greater than one dwelling unit per 5 acres and less than or equal
to one dwelling unit per 40,000 square feet, including both existing and
planned development and their associated infrastructure, such as roads,
utilities, and water and sewer service.

[(x)] *Mixed-use development* means a single, relatively high-density
development project, usually commercial in nature, which includes 2 or
more types of uses.

[(y)] *Municipal corporation* means a municipality without planning and
zoning authority, or which has assigned its responsibilities under
Subtitle 16 of the Natural Resources Article of the Maryland Code to
the County.

*Natural re-generation* means the natural establishment of trees and other
vegetation with at least 400 woody, free-to-grow seedlings per acre,
which are capable of reaching a height of at least 20 feet at maturity.

[(z)] *Net tract area* means the total area of a tract, including both forested
and unforested areas, to the nearest 1/10 acre, reduced by [the area
found to be within the boundaries of the 100-year floodplain; except
that] road or utility rights-of-way which will not be improved as part of
the development application. However, in agriculture and resource
areas, *net tract area* is the portion of the total tract for which land use
will be changed or will no longer be used for primarily agricultural
activities [; reduced by the area found to be within the boundaries of the
100-year floodplain]. For a linear project, *net tract area* is the area of a
right-of-way width or the limits of disturbance as shown on the
development application. whichever is greater.

[(aa)] *Nontidal wetland* means an area regulated as a nontidal wetland under
Title 8, Subtitle 12, of the Natural Resources Article of the Maryland
Code.
[(bb)] *Obligee* means a person obligated under a financial security instrument to meet certain regulatory requirements under Article II.

[(cc)] *Person* means:

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

[(dd)] *Planned unit development* means a development comprised of a combination of land uses or varying intensities of the same land use, having at least 20 percent of the land permanently dedicated to open space, and in accordance with an integrated plan that provides flexibility in land use design approved by the District Council under Division 59-D-1 or by the Planning Board under Division 59-D-2 of [the Zoning Ordinance) Chapter 59.

[(ee)] *Planning Board* means the County Planning Board of the Maryland-National Capital Park and Planning Commission.

[(ff)] *Planning Director* means the Director of the Montgomery County Park and Planning Department, or the Director's designee.

[(gg)] *Preliminary plan of subdivision* means a plan for a proposed subdivision or resubdivision prepared and submitted for approval by the Planning Board under Chapter 50 before preparation of a subdivision plat.
[(hh)] Project plan means a plan or an amendment to a plan approved under Division 59-D-2 of [the Zoning Ordinance] Chapter 59.

[(ii)] Public utility means:

165 (1) the transmission lines and the electric generating stations licensed under Article 78, Section 54A and 54B or 54-I of the Maryland Code; and

168 (2) water, sewer, electric, gas, telephone, and cable service facilities and lines.

[(jj)] Reforestation or reforested means the creation of a biological community dominated by trees and other woody plants (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 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground[,] within 7 years. [Reforestation includes the landscaping of areas under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of land area.]

Reforestation for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

[(kk)] Retention means the deliberate holding and protecting of existing trees and other plants on the site.

[(ll)] Sediment control permit means a permit required to be obtained for certain land disturbing activities:

186 (1) under Chapter 19, Article I;
(2) from the Washington Suburban Sanitary Commission for major utility construction as defined under regulations of the Commission; or

(3) from a municipal corporation.

[(mm)] Site plan means a plan or an amendment to a plan approved under Division 59-D-3 of [the Zoning Ordinance] Chapter 59.

[(nn)] Special exception means a use approved under Article 59-G of [the Zoning Ordinance] Chapter 59.

Special Protection Area (SPA) means a geographic area designated by the County Council under Section 19-62(a).

[(oo)] Technical Manual means a detailed guidance document used for administration of this Chapter that is adopted by the Planning Board under Section 22A-26.

[(pp)] Timber harvesting means a tree cutting operation affecting one or more acres of forest or developed woodland within a one year period that disturbs 5,000 square feet or more of forest floor. Timber harvesting does not include grubbing and clearing of root mass.

[(qq)] Tract means the property subject to a development application or a sediment control permit, as described by deed or record plat.

[(rr)] Tree means a large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

[(ss)] Tree cover means the combined area, in square feet, of the crowns of all trees on a tract. For replanting purposes, tree cover is the typical crown area for the specific tree at [maturity] 20 years.

[(tt)] Tree save plan means a plan prepared in conjunction with a development application [approved before July 1, 1992] indicating
where trees are to be retained or planted, including the establishment of conservation areas.

[(uu)] *Variance* means relief from this Chapter. [It] *Variance* does not mean a subdivision or zoning variance.

[(vv)] *Watershed* means all lands lying within an area described as a [subbasin in water quality regulations adopted by the State Department of Environment under COMAR 26.08.02.08.] watershed in the Countywide Stream Protection Strategy.

22A-4. **Applicability.**

Except as otherwise expressly provided in this Chapter, this Chapter applies to:

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

(b) a person required by law to obtain special exception approval or a sediment control permit [, or who is subject to mandatory referral, for a proposed activity on an area on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a); [of this Section.]

(c) a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger which is not exempt under subsection 22A-5(f) [and which is not otherwise required to obtain an approval under subsection (a)];

(d) highway construction not exempt under subsections 22A-5(e) or (p);

and

(e) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2), or (p).

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

22A-5. Exemptions.

The following are exempt from the requirements of Article II do not apply to:

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

(1) [is] does not [subject to] require a special exception [approval];

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

(A) more than a total of 40,000 square feet of forest;

(B) any forest in a stream buffer;

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

(D) any specimen or champion tree, or

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

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

* * *

(e) a state or county highway construction activity that is subject to Section
5-103 of the Natural Resources Article of the Maryland Code, or
Section 22A-9;

* * *

(k) any [lots] lot covered by a preliminary plan of subdivision or site plan
that [have not received] did not receive a sediment control permit before
July 1, 1991, and for which the preliminary plan of subdivision or site
plan:

(1) was approved before July 1, 1984, and has less than 40,000
square feet of forest cover; or

(2) was approved or extended between July 1, 1984 and July 1, 1991,
and

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

(A) any forest in a stream buffer; or

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

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

(n) any minor subdivision under Section 50-35A(a)(2)-(3) involving conversion of an existing recorded outlot created because of inadequate or unavailable sewerage or water service to a lot or joining two or more existing residential lots into one lot, if:

(1) [no new development is conducted on the resulting lot; or] the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); and

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

(A) more than a total of 40,000 square feet of forest,

(B) any forest in a stream buffer

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

(D) any specimen or champion tree, or

(E) any tree or forest that is subject to the requirements of a previously approved forest conservation plan or tree save plan;

[(n)(o) * * *]

(p) the construction of a public utility or highway in a utility right-of-way not exempt under subsection (o), or a highway right-of-way not exempt under subsection (e), if:

(1) the right-of-way existed before July 1, 1992;

(2) forest clearing will not exceed a total of 40,000 square feet and

(3) the construction will not result in the cutting, clearing, or grading of:
(A) any forest in a stream buffer.

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

(C) any specimen or champion tree, or

(D) any tree or forest that is subject to a previously approved forest conservation or tree save plan;

(q) a special exception application if:

(1) the application is for an existing structure and the proposed use will not result in clearing of existing forest or trees;

(2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the [cumulative] clearing of more than a total of 5000 additional square feet of forest or any specimen or champion tree;

or

(3) the total disturbance area for the proposed special exception use will not exceed 10,000 square feet, and [cumulative] clearing will not exceed a total of 5000 square feet of forest or include any specimen or champion tree;

(r) (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet;

or

(2) an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet.

Forest in any priority area on-site must be preserved; and
a modification to existing developed property if:

(1) [less than a total of 40,000] no more than 5000 square feet of forest will be cleared;

(2) the modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and

[(2)] (3) the modification does not require approval of a new subdivision plan.


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

(b) Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may [include] require tree preservation or mitigation for loss of individual trees. The plan requirements must be based [upon] on the size and character of the trees to be cleared. If trees to be cleared are part of an existing scenic buffer between public parkland and [any] a proposed development, trees which are smaller than specimen size may be [evaluated for inclusion] included in the [tree save] plan.

[[ * * *]]

22A-7. Activities or development not [exempted] exempt under Section
22A-5 - Special transition provision.

* * *

(c) If the Planning Board [determines] finds that a development approval between July 1, 1991 and July 1, 1992 was consistent with the retention, afforestation, or reforestation standards of this Chapter but is not exempt under this Section, [it] the Board may waive additional submission requirements at the time of any [subsequent] later sediment control permit application. However, [subject to Section 22A-12(i) for small tracts,] the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security [must not be waived].

* * *


* * *

(b) Calculation Rules; [Single Lot] Exemption

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

(2) A public right-of-way, public utility easement, or privately owned utility right-of-way is considered to be [a single lot for purposes of an exemption under Section 22A-5(a)] exempt under Section 22A-5(o) if the proposed activity and any future stages of the work on the utility line will not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest or the cutting, clearing, or grading of any specimen or
chamnion tree, or trees or forest that are subject to a previously approved forest conservation or tree save plan. [A declaration of intent is not required under Section 22A-5(a)(4); however, any subsequent] Any later stages of the work must be identified at the time of the initial sediment control permit application.

(3) If the [single lot] exemption [is] does not [applicable] apply, afforestation or reforestation requirements must be calculated using the net tract area applicable to the entire proposed utility line without regard to project segments subject to a specific sediment control permit. The property boundaries of the privately owned utility right-of-way, public utility easement, or public right-of-way (to the extent of the utility work) must be used in calculating the area of the tract. The net tract area should reflect any reduction in land area that will continue to be used for agricultural activities. Any requirement for mitigation for loss of any specimen or chamnion tree must be based on the size and character of the tree.

22A-9. [Reserved] County Highway Projects

(a) General.

(1) This section applies to construction of a highway by the County as part of an approved Capital Improvements Program project.

(2) The construction [[must]] should minimize forest cutting or clearing and loss of specimen or chamnion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make [[every]] a reasonable effort to minimize the cutting or clearing of trees and other woody plants.
(b) If the forest to be cut or cleared for a County highway project equals or exceeds 40,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of reforestation for each acre of forest cleared.

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

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

ARTICLE II.

FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.


* * *

(b) Forest stand delineation.

(1) A forest stand delineation [is to] must be used during the preliminary review process to [determine] find the most suitable and practical areas for tree and forest conservation. A forest stand delineation must contain topographic, hydrographic, soils, geologic, and qualitative and quantitative information on trees and forest cover, and other information or requirements specified in the regulations or technical manual.

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

(A) there is no forest on the site;

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

[(2)] (3) The Planning Director may waive any requirement for information that is [deemed to be] unnecessary for a specific site.

[(3)] (4) [A] An approved forest stand delineation is not valid after 2 years unless:

(A) a forest conservation plan has been accepted as complete; or

(B) the delineation has been recertified by the preparer.

(c) Forest conservation plan.

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

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

(a) General.

* * *

(2) Modification to an approved plan. The Planning Director may approve [field] modifications to an approved forest conservation plan that are consistent with this Chapter if:
(A) field inspections or other evaluation reveals minor inadequacies of the plan;

(B) each modification is minor and does not impact any forest in a priority area (such as substituting an on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or

[(B)] (C) action is otherwise required in an emergency situation.

[Review and approval of any] Any other [[modifications]] modification must be [done] approved by the [government entity] agency that approved the forest conservation plan.

22A-12. Retention, afforestation, and reforestation requirements.

(a) Table.

Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Forest Conservation Threshold</th>
<th>Required Afforestation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural and resource areas</td>
<td>50%</td>
<td>20%</td>
</tr>
<tr>
<td>Medium-density residential areas</td>
<td>25%</td>
<td>20%</td>
</tr>
<tr>
<td>Institutional development areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>High-density residential areas</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td>Mixed-use development areas</td>
<td>15-20%[*][44]</td>
<td>15%</td>
</tr>
<tr>
<td>Planned unit development areas</td>
<td>15-20%[*][44]</td>
<td>15%</td>
</tr>
<tr>
<td>Commercial and industrial use areas</td>
<td>15%</td>
<td>15%</td>
</tr>
</tbody>
</table>
(1) A religious institution must comply with the requirements that apply to the base zone in which it is located.

(2) 

(b) Retention.

(1) The primary objective of the forest conservation plan should be to retain existing forest cover and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless [the applicant can demonstrate, to the satisfaction of] the Planning Director[,] finds that:

(A) the development would make maximum use of [[flexibility for development types in the zone in which it is located]] any available planning and zoning options that would result in the greatest possible forest retention;

(B) reasonable efforts have been made to protect [them] [[forest and trees]] the specific areas and vegetation listed in the plan; and

(C) the development proposal cannot reasonably be altered.

(2) In general, [these] areas [[to be] protected under this subsection] include [certain]:

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

(B) contiguous forests;

(C) rare, threatened, and endangered species;

(D) trees connected to an historic site [and];

(E) exceptionally large trees; and

(F) areas designated as priority save areas in a master plan or
(e) Standards for reforestation and afforestation.

(1) Preferred sequence. Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation is, in general[.], enhancement of existing forest through on-site selective clearing, supplemental planting [[on-site]], or both; on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan[,]; and off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible [and natural regeneration on-site or off-site].

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

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

(B) Protection of existing off-site forest. Acquisition of an off-site protective easement for existing forested areas not currently protected is an acceptable mitigation technique instead of off-site afforestation or reforestation planting. but the forest cover protected must be 2 times the afforestation and reforestation requirements.
(C) For sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

[(2)](3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials [when appropriate] is preferred. Unless [otherwise provided by] the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58[, Weeds].

[(3)](4) * * *

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

[(5)](6) * * *

(f) Special provisions for minimum retention, reforestation and afforestation.

(1) General. Any site developed in an agricultural and resource area, any planned unit development, any site developed under a cluster or other optional method of development in a one-family residential zone, and any waiver from a zoning requirement for environmental reasons, must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement.
Retention, reforestation and afforestation. Forest retention should be maximized where possible on each site listed in this subsection. At a minimum, on-site forest retention and in some cases reforestation and afforestation, must be required as follows:

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

(B) In a planned development or a site developed using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a waiver or variance from base zone standards under Sections 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or 59-C-7.131, if as a condition of the waiver or variance the Planning Board or County Council must find that the resulting development is environmentally more desirable.

(C) On a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.

(D) If a site covered by this subsection is unforested, on-site afforestation must equal the applicable afforestation threshold.
(3) [[Waiver of retention requirement.]] If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this [[Section]] subsection is not possible [[or economically feasible]], the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.

(4) Retention, reforestation, and afforestation must adhere to the priorities and sequence established in subsections (b) and (c).

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

(1) General

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

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

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

(C) Afforestation on sites with no priority planting areas. If a site has afforestation planting requirements 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. The applicant may pay the fee instead of doing off-site afforestation.

(D) Reforestation on small properties with no priority planting areas. An applicant may pay the fee instead of on-site or off-site reforestation on properties less than 5 acres when 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.

(E) Sites with minor reforestation requirements. An applicant may pay the fee instead of on-site or off-site reforestation for any plan where overall reforestation requirements are less than \([0.5]\) \(\frac{1}{2}\) 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.

[g] (h) Agreements. * * *

[h] (i) Financial Security.

* * *

(1) * * *

(B) full payment of monies funds to be paid [in lieu] instead of afforestation or reforestation, if required under subsection [(f)] (g) [of this Section].

* * *

(i) Special provision for smaller tracts.

(1) For tracts under 40,000 square feet, the Planning Board may approve a modified forest conservation plan without the need for an applicant to obtain a variance under this Chapter.
The Planning Board may waive or modify requirements under this Chapter for financial security, a short-term maintenance agreement, and long-term protective measures.

Retention, afforestation, and reforestation should be required in accordance with this Section. However, the afforestation and reforestation requirements for a tract subject to this subsection must be calculated in terms of tree cover instead of forest cover.

The Planning Board may grant a waiver of afforestation or reforestation requirements upon a showing of hardship or other appropriate justification.


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

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

(c) A forest mitigation bank must use native plants for afforestation and reforestation, unless inappropriate.

(d) A person proposing to create a forest mitigation bank must submit a plan to the Planning Director, which must include:

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

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

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

(e) Forest mitigation banks must be established in priority areas described
in subsection 22A-12(e)(2)[(2)](3), or in areas identified in a master plan or functional plan.

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

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


* * *

22A-16. Penalties and other remedies.

* * *

(d) Administrative civil penalty.

* * *

(2) In determining the amount of the civil penalty, or the extent of an administrative order issued by the Planning Director under Section 22A-17, the Planning Board or Planning Director must consider:

(A) the willfulness of the violations;
(B) the damage or injury to tree resources;
(C) the cost of corrective action or restoration;
(D) any adverse impact on water quality;
(E) the extent to which the current violation is part of a
    recurrent pattern of the same or similar type of violation
    committed by the violator; and
(F) other relevant factors.

The Board or Director may treat any forest clearing in a steam
buffer, wetland, or special protection area as creating a rebuttable
presumption that the clearing had an adverse impact on water
quality.

* * *

22A-17. Corrective [[orders]] actions.

(a) Administrative order. At any time, including during an enforcement
    action, the Planning Director may issue an administrative order
    requiring the violator to take [[corrective action]] one or more of the
    following actions within a certain time period[]. The corrective action
    may include an order to]]:

    (1) stop the violation;
    (2) stabilize the site to comply with a reforestation plan;
    (3) stop all work at the site;
    (4) restore or reforest unlawfully cleared areas; [[or]]
    (5) submit a forest conservation plan for the property;
    (6) place forested or reforested land under long-term protection by a
        conservation easement, deed restriction, covenant, or other
        appropriate legal instrument; or
    (7) submit a written report or plan concerning the violation.
(b) **Effectiveness of order.** An order issued under this Section is effective
[[immediately,]] according to its terms, when it is served.

* * *

22A-26. **Regulations.**

(a) **Adoption.** The Planning Board must adopt regulations, including [a
technical manual and] necessary procedures to administer this Chapter.

In adopting the regulations, the Board must follow the adoption
procedures for a Method (2) regulation under Section 2A-15 and any
requirements applicable under State law. However, a proposed
regulation of a procedural nature, or that would implement changes in
State law or regulation, [including the State technical manual,] may be
adopted under Method (3) if it is [[not inconsistent]] consistent with this
Chapter. The regulations must include procedures [for the amendment
of] to amend a forest conservation plan and declaration of intent.

(b) **Technical manual.** The technical manual must include [the] guidance
and methodologies [and standards] for:

1. preparing and evaluating a forest stand delineation and natural
resources inventory;
2. preparing and evaluating a forest conservation plan, including
priorities for forest retention, reforestation, and afforestation, and
a recommended tree species list;
3. providing forest or tree protective measures during and after
clearing or construction, including planting, tree relocation and
maintenance;
4. monitoring and enforcement of forest conservation plans; and
5. other appropriate guidance for program requirements consistent
with this Chapter and the regulations.
(c) Development agreements; Conservation easements[; etc]. The Planning Board may [include] in the regulations [requirements for] require developer agreements, conservation easements, land trusts, covenants, and deed restrictions as part of [the] an approved forest conservation plan.

(d) Administrative fee. The Planning Board must charge a fee to cover at least partially the costs of administering this Chapter, including review of submittals and field inspections. The fee [must be set by regulation adopted under Method (2)] schedule must be set by the Planning Board as part of the development application process. Different fees may be set based on the size of the tract or other relevant factors.

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

(f) [State technical manual and regulations. Until the Planning Board adopts regulations under this Section, the Board may use any technical manual or regulations adopted by the State Department of Natural Resources under Subtitle 16 of the Natural Resources Article of the Maryland Code.]

[g] Reports. The Planning Board must make all [required] reports on the County forest conservation program to the General Assembly and State Department of Natural Resources that are required under State law or regulation. The reports should be reviewed by the County Arborist for comment, and copies of all final reports must be transmitted to the County Council and County Executive.
22A-27. Forest conservation fund.

There is a County forest conservation fund. Money deposited into the fund must be used in accordance with the adopted County budget and in accordance with the following:

(a) In lieu fees. [Money deposited in the forest conservation fund in lieu of planting will remain in the fund for a period of 2 years from the date that the money is received under this Chapter. That portion of the money equal to what would be required under Section 5-1610 of the Natural Resources Article of the Maryland Code may only be spent on reforestation and afforestation, including the costs directly related to site identification, acquisition, and preparation, and may not revert to the general fund. The remainder may be spent on any other tree conservation activities, including street tree planting. At the end of that time period, any portion that has not been used in accordance with this Section must be returned to the person who paid the money into the fund.] Money deposited in the forest conservation fund instead of planting must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, and preparation, and must not revert to the general fund. The permanent preservation of priority forests, including [[site]] identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied may be spent on any other tree conservation activity, including street tree
(b) Penalties. Money collected for noncompliance with a forest conservation plan or the associated 2-year maintenance agreement[,] must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used [for purposes] to [implementing] administer this Chapter.

Sec. 2. Transition.

Any amendment to Chapter 22A, inserted by Section 1 of this Act, does not apply to:

(a) a preliminary or final forest conservation plan approved before this Act took effect, or

(b) a county highway project individually listed in the County Capital Improvement Program and submitted to the Planning Board under mandatory referral review before this Act took effect.

Approved:

Blair G. Ewing, President, County Council

Approved:

Douglas M. Duncan, County Executive

This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council