

Bill No. 35-00
Concerning: Forest Conservation -
Amendments
Revised: 7-19-01 Draft No. 8
Introduced: December 12, 2000
Enacted: July 24, 2001
Executive: August 6, 2001
Effective: November 5, 2001
Sunset Date: None
Ch. 19, Laws of Mont. Co. 2001

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

1 **Sec. 1. Chapter 22A is amended as follows:**

2 * * *

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

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

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

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

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

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

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

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

27 (1) is for purposes exempted under this Chapter; and

- 28 (2) will not circumvent the requirements of this Chapter.
- 29 **[(g)]** *Development plan* means a plan or an amendment to a plan approved
30 under Division 59-D-1 of [the Zoning Ordinance] Chapter 59.
- 31 **[(h)]** *Development project completion* means the date or event identified as
32 such in the forest conservation plan agreement, but no later than the date
33 on which the first use-and-occupancy permit is issued for the
34 development (or activity) subject to the preliminary plan of subdivision
35 or sediment control permit or, if a use-and-occupancy permit is not
36 required, the date on which the final building inspection or sediment
37 control inspection (for activities not involving building) is conducted by
38 the Department of Permitting Services. A staged development may
39 have more than one completion date.
- 40 **[(i)]** *District Council* means the County Council in its capacity, under Article
41 28 of the Maryland Code, to act on planning and zoning matters for the
42 Maryland-Washington Regional District.
- 43 **[(j)]** *Floodplain (100-year)* means an area along or adjacent to a stream or
44 body of water, except tidal waters, that is capable of storing or
45 conveying floodwaters during a 100-year frequency storm event, or a
46 100-year flood.
- 47 **[(k)]** *Forest* means a biological community dominated by trees and other
48 woody plants (including plant communities, the understory, and forest
49 floor) covering a land area [of] which is 10,000 square feet or greater
50 and at least 50 feet wide. However, minor portions of a forest stand
51 which otherwise meet this definition may be less than 50 feet wide if
52 they exhibit the same character and composition as the overall stand.
53 *Forest includes:*

54 (1) areas that have at least 100 live trees per acre with at least 50
 55 percent of those trees having a 2 inch or greater diameter at 4.5
 56 feet above the ground; and

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

58 *Forest* does not include an orchard[s].

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

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

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

66 [(o)] *Forest conservation threshold* means the percentage of the net tract area
 67 at which the reforestation requirement changes from a ratio of ¼ acre
 68 planted for every one acre removed to a ratio of 2 acres planted for
 69 every one acre removed.

70 [(p)] *Forest cover* means the area of a site meeting the definition of forest.

71 Forest mitigation banking means the intentional preservation.
 72 restoration. or creation of forests undertaken expressly to provide credits
 73 for afforestation or reforestation requirements.

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

77 [(r)] *High-density residential area* means an area zoned for densities greater
 78 than one dwelling unit per 40,000 square feet, including both existing
 79 and planned development and their associated infrastructure, such as
 80 roads, utilities, and water and sewer service.

- 81 **[(s)]** *Institutional development area* means land occupied by uses such as
 82 schools, colleges, and universities, military installations, transportation
 83 facilities, utility and sewer projects, government offices and facilities,
 84 fire stations, golf courses, recreation areas, parks, and cemeteries. In this
 85 Chapter, institutional development does not include a religious
 86 institution which is a permitted use in any zone and would not require a
 87 special exception.
- 88 **[(t)]** *Land disturbing activities* has the same meaning as in Chapter 19.
 89 Linear project means a project whose configuration is elongated with
 90 nearly parallel sides and used to transport a utility product or public
 91 service not otherwise to be constructed or improved as part of an
 92 application for subdivision approval, such as electricitv, gas, water,
 93 sewer, communications, trains, pedestrians, and vehicles. A linear
 94 project may traverse fee simple properties through defined boundaries
 95 or through easement rights.
- 96 **[(u)]** *Lot* means for the purpose of this Chapter a [unit] tract of land, the
 97 boundaries of which have been established as a result of a deed or
 98 previous subdivision of a larger parcel, and which will not be the subject
 99 of further subdivision, as defined under Section [5-1601 of the Natural
 100 Resources Article of the Maryland Code] 50-1, without an approved
 101 forest stand delineation and forest conservation plan.
- 102 **[(v)]** *Mandatory referral* means the required review by the Planning Board of
 103 projects or activities to be undertaken by governmental agencies and
 104 private and public utilities under Section 7-112 of Article 28 of the
 105 Maryland Code.
- 106 **[(w)]** *Medium -density residential* means an area zoned for [densities] a
 107 density greater than one dwelling unit per 5 acres and less than or equal

108 to one dwelling unit per 40,000 square feet, including both existing and
 109 planned development and their associated infrastructure, such as roads,
 110 utilities, and water and sewer service.

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

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

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

121 [(z)] *Net tract area* means the total area of a tract, including both forested
 122 and unforested areas, to the nearest 1/10 acre, reduced by [the area
 123 found to be within the boundaries of the 100-year floodplain; except
 124 that] road or utility rights-of-way which will not be improved as part of
 125 the development application. However, in agriculture and resource
 126 areas, net tract area is the portion of the total tract for which land use
 127 will be changed or will no longer be used for primarily agricultural
 128 activities [, reduced by the area found to be within the boundaries of the
 129 100-year floodplain]. For a linear project, net tract area is the area of a
 130 right-of-way width or the limits of disturbance as shown on the
 131 development application, whichever is greater.

132 [(aa)] *Nontidal wetland* means an area regulated as a nontidal wetland under
 133 Title 8, Subtitle 12, of the Natural Resources Article of the Maryland
 134 Code.

135 [(bb)] *Obligee* means a person obligated under a financial security instrument
 136 to meet certain regulatory requirements under Article II.

137 [(cc)] *Person* means:

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

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

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

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

158 [(gg)] *Preliminary plan of subdivision* means a plan for a proposed
 159 subdivision or resubdivision prepared and submitted for approval by the
 160 Planning Board under Chapter 50 before preparation of a subdivision
 161 plat.

162 [(hh)] *Project plan* means a plan or an amendment to a plan approved under
 163 Division 59-D-2 of [the Zoning Ordinance] Chapter 59.

164 [(ii)] *Public utility* means:

- 165 (1) the transmission lines and the electric generating stations licensed
- 166 under Article 78, Section 54A and 54B or 54-I of the Maryland
- 167 Code; and
- 168 (2) water, sewer, electric, gas, telephone, and cable service facilities
- 169 and lines.

170 [(ij)] *Reforestation or reforested* means the creation of a biological
 171 community dominated by trees and other woody plants (including plant
 172 communities, the understory, and forest floor) which is at least 10,000
 173 square feet in area and 50 feet wide, and containing at least 100 live
 174 trees per acre, with at least 50 percent of those trees having the potential
 175 of attaining a 2 inch or greater diameter measured at 4.5 feet above the
 176 ground[,] within 7 years. [Reforestation includes the landscaping of
 177 areas under an approved landscaping plan that establishes a forest at
 178 least 35 feet wide and covering at least 2,500 square feet of land area.]
 179 *Reforestation for a linear project which involves* overhead transmission
 180 lines may consist of a biological community dominated by trees and
 181 woody shrubs with no minimum height or diameter criteria.

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

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

- 186 (1) under Chapter 19, Article I;

187 (2) from the Washington Suburban Sanitary Commission for major
 188 utility construction as defined under regulations of the
 189 Commission; or

190 (3) from a municipal corporation.

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

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

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

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

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

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

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

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

212 [(tt)] *Tree save plan* means a plan prepared in conjunction with a
 213 development application [approved before July 1, 1992] indicating

214 where trees are to be retained or planted, including the establishment of
 215 conservation areas.

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

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

222 **22A-4. Applicability.**

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

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

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

232 (c) a government entity subject to mandatory referral on a tract of land
 233 40,000 square feet or larger which is not exempt under subsection 22A-
 234 5(f) [[and which is not otherwise required to obtain an approval under
 235 subsection (a)]];

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

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

240 Any person who expects to cut, clear, or grade more than 5000 square feet of

241 forest and who believes that the cutting, clearing or grading is exempt under Section
 242 22A-5, 22A-6, 22A-7, or 22A-8, must notify the Planning Director in writing before
 243 performing any cutting, clearing or grading and seek confirmation from the Director
 244 that the cutting, clearing or grading is in fact exempt from Article II. Failing to
 245 notify the Director as required by this Section, or performing any cutting, clearing, or
 246 grading before the Director confirms that an exemption applies, is a violation of this
 247 Chapter.

248 **22A-5. Exemptions.**

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

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

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

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

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

258 ~~[[3)]~~ will not result in the cutting, clearing, or grading of]

259 (B) any forest in a stream buffer,

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

262 (D) any specimen or champion tree, or

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

266 ~~[[4)]~~ (3) is subject to a declaration of intent filed with the Planning
 267 Director stating that the lot will not be the subject of additional

268 regulated activities under this Chapter within 5 years of the
 269 cutting, clearing, or grading of forest;

270 * * *

271 (e) a state or county highway construction activity that is subject to Section
 272 5-103 of the Natural Resources Article of the Maryland Code, or
 273 Section 22A-9;

274 * * *

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

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

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

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

285 (A) any forest in a stream buffer; or

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

288 A preliminary plan of subdivision or site plan approved before July 1,
 289 1991, that is revised after that date at the initiative of the applicant and
 290 which results in the cutting of more than 5,000 additional square feet of
 291 forest is not exempt. Development or redevelopment of a property
 292 which requires resubdivision is not exempt. This subsection does not
 293 apply to a planned unit development subject to subsection (1) [of this
 294 Section];

295 (m) * * * [and]

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

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

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

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

307 (B) any forest in a stream buffer,

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

310 (D) any specimen or champion tree, or

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

314 [(n)](o) * * *

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

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

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

320 (3) the construction will not result in the cutting, clearing, or grading
 321 of;

- 322 (A) any forest in a stream buffer.
- 323 (B) any forest on property located in a special protection area
- 324 which must submit a water quality plan.
- 325 (C) any specimen or champion tree, or
- 326 (D) any tree or forest that is subject to a previously approved
- 327 forest conservation or tree save plan;

328 (q) a special excention application if:

- 329 (1) the application is for an existing structure and the proposed use
- 330 will not result in clearing of existing forest or trees;
- 331 (2) the application modifies an existing special excention use which
- 332 was approved before July 1, 1991, and the revision will not result
- 333 in the [[cumulative]] clearing of more than a total of 5000
- 334 additional square feet of forest or any specimen or champion tree;
- 335 or
- 336 (3) the total disturbance area for the proposed special excention use
- 337 will not exceed 10,000 square feet, and [[cumulative]] clearing
- 338 will not exceed a total of 5000 square feet of forest or include any
- 339 specimen or champion tree;

- 340 (r) (1) an activity occurring on a tract of land less than 1.5 acres with no
- 341 existing forest, or existing specimen or champion tree, and the
- 342 afforestation requirements would not exceed 10,000 square feet;
- 343 or
- 344 (2) an activity occurring on a tract less than 1 acre that will not result
- 345 in the clearing of more than a total of 30,000 square feet of
- 346 existing forest, or any existing specimen or champion tree, and
- 347 reafforestation requirements would not exceed 10,000 square feet.
- 348 Forest in any priority area on-site must be preserved; and

- 349 (s) a modification to existing developed property if:
- 350 (1) [[less than a total of 40,000]] no more than 5000 square feet of
- 351 forest will be cleared;
- 352 (2) the modification does not affect any forest in a stream buffer or
- 353 located on property in a special protection area which must
- 354 submit a water quality plan; and
- 355 [[2]] (3) the modification does not require approval of a new
- 356 subdivision plan.

357 **22A-6. Exemptions - Special [transition] provisions.**

358 (a) Special transition provision. An activity or development that is

359 exempted under Section 22A-5, but which requires site plan approval, is

360 subject to the local law applicable to tree conservation in effect before

361 July 1, 1992. However, a violation of the requirements of any tree save

362 plan or similar condition of approval may be enforced using [remedies]

363 any remedy provided under this Chapter.

364 (b) Tree save plan provision. An activity or development that would be

365 exempt under Section 22A-5, except that the proposed activity involves

366 clearing of a specimen or champion tree, requires the approval of a tree

367 save plan, which may [[include]] require tree preservation or mitigation

368 for loss of individual trees. The plan requirements must be based

369 [[upon]] on the size and character of the trees to be cleared. If trees to

370 be cleared are part of an existing scenic buffer between public parkland

371 and [[any]] a proposed development, trees which are smaller than

372 specimen size may be [[evaluated for inclusion]] included in the [[tree

373 save]] plan.

374 [[* * *]]

375 **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].

* * *

22A-8. Utility Lines.

* * *

(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

403 champion tree, or trees or forest that are subject to a previously
 404 approved forest conservation or tree save plan. [A declaration of
 405 intent is not required under Section 22A-5(a)(4); however, any
 406 subsequent] Any later stages of the work must be identified at the
 407 time of the initial sediment control permit application.

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

420 **22A-9. [Reserved] County Highway Projects**

421 (a) *General.*

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

424 (2) The construction [[must]] should minimize forest cutting or
 425 clearing and loss of specimen or champion trees to the extent
 426 possible while balancing other design, construction, and
 427 environmental standards. The constructing agency must make
 428 [[every]] a reasonable effort to minimize the cutting or clearing of
 429 trees and other woody plants.

430 (b) If the forest to be cut or cleared for a County highway project equals or
 431 exceeds 40,000 square feet, the constructing agency must reforest a
 432 suitable area at the rate of one acre of reforestation for each acre of
 433 forest cleared.

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

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

438 **ARTICLE II.**

439 **FOREST STAND DELINEATIONS AND FOREST CONSERVATION**
 440 **PLANS.**

441 **22A-10. General.**

442 * * *

443 (b) *Forest stand delineation.*

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

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

453 (A) there is no forest on the site;

454 (B) no forest on the site would be cut, cleared, or graded for
 455 the proposed use, and all forest on the site would be
 456 subject to a long-term protective agreement; or

457 (C) the on-site forest is located on a portion of the tract which
 458 is exempt from this Article, such as areas remaining in
 459 agricultural use as part of a subdivision.

460 [(2)] (3) The Planning Director may waive any requirement for
 461 information that is [deemed to be] unnecessary for a specific site.

462 [(3)] (4) [A] An approved forest stand delineation is not valid after 2
 463 years unless:

- 464 (A) a forest conservation plan has been accepted as complete;
- 465 or
- 466 (B) the delineation has been recertified by the preparer.

467 (c) *Forest conservation plan.*

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

478 **22A-11. Application, review, and approval procedures.**

479 (a) *General.*

480 * * *

481 (2) Modification to an approved plan. The Planning Director may
 482 approve [field] modifications to an approved forest conservation
 483 plan that are consistent with this Chapter if:

484 (A) field inspections or other evaluation reveals minor
 485 inadequacies of the plan;
 486 (B) each modification is minor and does not impact any forest
 487 in a priority area (such as substituting an on-site
 488 conservation area for an equal or greater on-site area of
 489 similar character. or substituting a marginal on-site
 490 conservation area for equal or greater amount of off-site
 491 priority area); or
 492 [(B)] (C) action is otherwise required in an emergency situation.
 493 [Review and approval of any] Any other [[modifications]]
 494 modification must be [done] approved by the [government entity]
 495 agency that approved the forest conservation plan.

496 **22A-12. Retention, afforestation, and reforestation requirements.**

497 (a) *Table.*

498 *Forest Conservation Threshold and Required*

499 *Afforestation as a Percentage of Net Tract Area*

Land Use Category ⁽¹⁾	Forest Conservation Threshold	Required Afforestation
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%[*] ⁽²⁾	15%
Planned unit development areas	15-20%[*] ⁽²⁾	15%
Commercial and industrial use areas	15%	15%

500 (1) A religious institution must comply with the requirements that
 501 apply to the base zone in which it is located.

502 [*](2) * * *

503 (b) *Retention.*

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

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

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

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

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

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

522 (B) contiguous forests;

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

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

525 (E) exceptionally large trees; and

526 (F) areas designated as priority save areas in a master plan or

527 functional plan.

528 * * *

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

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

541 * * *

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

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

547 (B) Protection of existing off-site forest. Acquisition of an off-
 548 site protective easement for existing forested areas not
 549 currently protected is an acceptable mitigation technique
 550 instead of off-site afforestation or reforestation planting,
 551 but the forest cover protected must be 2 times the
 552 afforestation and reforestation requirements.

553 (C) For sites located in existing population centers, use of
 554 street trees which meet landscape or streetscape goals
 555 identified in an applicable master plan.

556 [(2)](3) Priority areas and plantings. Afforestation and reforestation
 557 should be directed to stream buffer areas, connections between
 558 and additions to forested areas, critical habitat areas,
 559 topographically unstable areas, and land use and road buffers.
 560 The use of native plant materials [, when appropriate,] is
 561 preferred. Unless [otherwise provided by] the Planning Board or
 562 Planning Director order otherwise. the required use of natural
 563 regeneration under this Chapter supercedes any prohibition under
 564 Chapter 58[, Weeds].

565 [(3)](4) * * *

566 [(4)](5) Deadline for plant installation. The afforestation and
 567 reforestation requirements under this subsection must be
 568 accomplished within one year or 2 growing seasons after a
 569 development project [completion] is complete.

570 [(5)](6) * * *

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

573 (1) General. Any site developed in an agricultural and resource area,
 574 any planned unit development, any site developed under a cluster
 575 or other optional method of development in a one-family
 576 residential zone, and any waiver from a zoning requirement for
 577 environmental reasons, must include a minimum amount of forest
 578 on-site as part of meeting its total forest conservation
 579 requirement.

- 580 (2) Retention, reforestation and afforestation. Forest retention should
581 be maximized where possible on each site listed in this
582 subsection. At a minimum, on-site forest retention, and in some
583 cases reforestation and afforestation, must be required as follows:
- 584 (A) In an agricultural and resource area, on-site forest retention
585 must equal 25% of the net tract area.
- 586 (B) In a planned development or a site developed using a
587 cluster or other optional method of development in a one-
588 family residential zone, on-site forest retention must equal
589 the applicable conservation threshold in subsection (a).
590 This requirement also applies to any site seeking a waiver
591 or variance from base zone standards under Sections 59-C-
592 1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or 59-C-
593 7.131, if as a condition of the waiver or variance the
594 Planning Board or County Council must find that the
595 resulting development is environmentally more desirable.
- 596 (C) On a site covered by this subsection, if existing forest is
597 less than the minimum required retention, all existing
598 forest must be retained and on-site afforestation up to the
599 minimum standard must be provided. If existing forest is
600 less than the applicable afforestation threshold in
601 subsection (a), the afforestation threshold is the minimum
602 on-site forest requirement.
- 603 (D) If a site covered by this subsection is unforested, on-site
604 afforestation must equal the applicable afforestation
605 threshold.

606 (3) [[Waiver of retention requirement.]] If the Planning Board or
 607 Planning Director, as appropriate, finds that forest retention
 608 required in this [[Section]] subsection is not possible [[or
 609 economically feasible]], the applicant must provide the maximum
 610 possible on-site retention in combination with on-site
 611 reforestation and afforestation, not including landscaping.

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

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

615 (1) General. * * *

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

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

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

629 (C) Afforestation on sites with no priority planting areas. If a
 630 site has afforestation planting requirements and the
 631 Planning Board or Planning Director, as appropriate, finds
 632 that no on-site priority planting area is present and no other

633 appropriate on-site planting area is available. the applicant
634 may pay the fee instead of doing off-site afforestation.

635 (D) Reforestation on small properties with no priority planting
636 areas. An applicant may pay the fee instead of on-site or
637 off-site reforestation on properties less than 5 acres when
638 the Planning Board or Planning Director. as appropriate.
639 finds that no on-site priority planting area is present and no
640 other appropriate on-site planting area is available.

641 (E) Sites with minor reforestation requirements. An applicant
642 may pay the fee instead of on-site or off-site reforestation
643 for any plan where overall reforestation requirements are
644 less than [[0.5]] 1/2 acre and the Planning Board or Planning
645 Director. as appropriate. finds that no on-site priority
646 planting area is present and no other appropriate on-site
647 planting area is available.

648 [(g)] (h) *Agreements.* * * *

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

650 * * *

651 (1) * * *

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

655 * * *

656 [(i)] *Special provision for smaller tracts.*

657 (1) For tracts under 40,000 square feet, the Planning Board may
658 approve a modified forest conservation plan without the need for
659 an applicant to obtain a variance under this Chapter.

- 660 (2) The Planning Board may waive or modify requirements under
 661 this Chapter for financial security, a short-term maintenance
 662 agreement, and long-term protective measures.
- 663 (3) Retention, afforestation, and reforestation should be required in
 664 accordance with this Section. However, the afforestation and
 665 reforestation requirements for a tract subject to this subsection
 666 must be calculated in terms of tree cover instead of forest cover.
 667 The Planning Board may grant a waiver of afforestation or
 668 reforestation requirements upon a showing of hardship or other
 669 appropriate justification.]

670 **22A-13. Forest mitigation banks.**

- 671 (a) A person may create a forest mitigation bank from which applicants
 672 may buy credits by afforesting or reforesting an area of land under a
 673 forest mitigation bank plan approved by the Planning Director.
- 674 (b) The area of land where the bank is planted must be at least 1 acre.
- 675 (c) A forest mitigation bank must use native plants for afforestation and
 676 reforestation. unless inappropriate.
- 677 (d) A person proposing to create a forest mitigation bank must submit a
 678 plan to the Planning Director. which must include:
- 679 (1) a 2-year maintenance agreement which meets the standards in
 680 subsection 22A-12[(g)](h)(1);
- 681 (2) all information required by subsection 22A-10(c) for a forest
 682 conservation plan; and
- 683 (3) the draft easement, covenants, or deed restrictions for the area to
 684 be sold to the developer when credits are withdrawn from the
 685 bank.
- 686 (e) Forest mitigation banks must be established in priority areas described

687 in subsection 22A-12(e) ~~[(2)](3), or in areas identified in a master plan~~
688 or functional plan.

689 (f) Credits must not be debited from a forest mitigation bank until all trees
690 have been planted and accented by the Planning Director, and either
691 financial security which meets the standards in subsection 22A-
692 12 ~~[(h)](i) has been provided or the Planning Director has found that a~~
693 sufficient number of trees have successfully survived for 2 years after
694 planting.

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

703 [22A-13,] 22A-14. Reserved.

704 * * *

705 **22A-16. Penalties and other remedies.**

706 * * *

707 (d) *Administrative civil penalty.*

708 * * *

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

713 (A) the willfulness of the violations;

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

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

725 * * *

726 **22A-17. Corrective ~~[[orders]]~~ actions.**

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

- 732 (1) stop the violation;
- 733 (2) stabilize the site to comply with a reforestation plan;
- 734 (3) stop all work at the site;
- 735 (4) restore or reforest unlawfully cleared areas; ~~[[or]]~~
- 736 (5) submit a forest conservation plan for the property;
- 737 (6) place forested or reforested land under long-term protection by a
 738 conservation easement, deed restriction, covenant, or other
 739 appropriate legal instrument; or
- 740 (7) submit a written report or plan concerning the violation.

741 (b) *Effectiveness of order.* An order issued under this Section is effective
742 [[immediately,]] according to its terms, when it is served.

743 * * *

744 **22A-26. Regulations.**

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

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

- 757 (1) preparing and evaluating a forest stand delineation and natural
758 resources inventory;
- 759 (2) preparing and evaluating a forest conservation plan, including
760 priorities for forest retention, reforestation, and afforestation, and
761 a recommended tree species list;
- 762 (3) providing forest or tree protective measures during and after
763 clearing or construction, including planting, tree relocation and
764 maintenance;
- 765 (4) monitoring and enforcement of forest conservation plans; and
766 (5) other appropriate guidance for program requirements consistent
767 with this Chapter and the regulations.

- 768 (c) *Development agreements; Conservation easements[, etc].* The Planning
769 Board may [include] in the regulations [requirements for] require
770 developer agreements, conservation easements, land trusts, covenants,
771 and deed restrictions as part of [the] an approved forest conservation
772 plan.
- 773 (d) *Administrative fee.* The Planning Board must charge a fee to cover at
774 least partially the costs of administering this Chapter, including review
775 of submittals and field inspections. The fee [must be set by regulation
776 adopted under Method (2)] schedule must be set by the Planning Board
777 as part of the development application process. Different fees may be
778 set based on the size of the tract or other relevant factors.
- 779 (e) *Additional regulations.* Notwithstanding any other provision of this
780 Chapter, the Planning Board may, by regulation adopted under Method
781 (3), require preapplication submissions for a forest stand delineation and
782 allow modified application submissions or procedures for development
783 projects of a minor scale or public utility projects.
- 784 (f) [*State technical manual and regulations.* Until the Planning Board
785 adopts regulations under this Section, the Board may use any technical
786 manual or regulations adopted by the State Department of Natural
787 Resources under Subtitle 16 of the Natural Resources Article of the
788 Maryland Code.]
- 789 [(g)] *Reports.* The Planning Board must make all [required] reports on the
790 County forest conservation program to the General Assembly and State
791 Department of Natural Resources that are required under State law or
792 regulation. The reports should be reviewed by the County Arborist for
793 comment, and copies of all final reports must be transmitted to the
794 County Council and County Executive.

795 ~~[(h)](g)~~ * * *

796 ~~[(i)](h)~~ * * *

797 **22A-27. Forest conservation fund.**

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

801 (a) In lieu fees. [Money deposited in the forest conservation fund in lieu of
 802 planting will remain in the fund for a period of 2 years from the date
 803 that the money is received under this Chapter. That portion of the
 804 money equal to what would be required under Section 5-1610 of the
 805 Natural Resources Article of the Maryland Code may only be spent on
 806 reforestation and afforestation, including the costs directly related to site
 807 identification, acquisition, and preparation, and may not revert to the
 808 general fund. The remainder may be spent on any other tree
 809 conservation activities, including street tree planting. At the end of that
 810 time period, any portion that has not been used in accordance with this
 811 Section must be returned to the person who paid the money into the
 812 fund.] Money deposited in the forest conservation fund instead of
 813 planting must be spent on the reforestation and afforestation for which
 814 the money is deposited, including costs directly related to site
 815 identification, acquisition, design, and preparation, and must not revert
 816 to the general fund. The permanent preservation of priority forests,
 817 including ~~[[site]]~~ identification and acquisition of a site, may be
 818 substituted for reforestation and afforestation at a rate of 2 acres of
 819 forest preservation for each acre of planting required. Funds remaining
 820 after all reforestation and afforestation requirements are satisfied may be
 821 spent on any other tree conservation activity, including street tree

822 planting.
 823 (b) Penalties. Money collected for noncompliance with a forest
 824 conservation plan or the associated 2-year maintenance agreement[,]
 825 must be deposited in a separate account in the forest conservation fund.
 826 Money deposited in this fund may be used [for purposes] to
 827 [implementing] administer this Chapter.

828 **Sec. 2. Transition.**

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

- 831 (a) a preliminary or final forest conservation plan approved before this Act
- 832 took effect, or
- 833 (b) a county highway project individually listed in the County Capital
- 834 Improvements Program and submitted to the Planning Board under
- 835 mandatory referral review before this Act took effect.

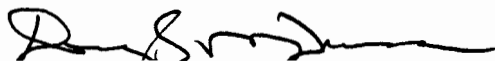
836 *Approved:*



837 Blair G. Ewing, President, County Council

Jul 25, 2001
 / / Date

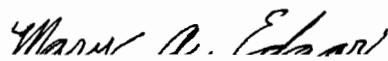
838 *Approved:*



839 Douglas M. Duncan, County Executive

August 1, 2001
 / / Date

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



841 Mary A. Edgar, CMC, Clerk of the Council

August 7, 2001
 / / Date