COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the Planning Board

AN ACT to:

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

By amending
Montgomery County Code
Chapter 22A, Forest Conservation

**Boldface** Heading or defined term.
**Underlining** Added to existing law by original bill.
**[Single boldface brackets]** Added to existing law by original bill.
**Double underlining** Deleted from existing law by original bill.
**[[Double boldface brackets]]** 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:
Sec. 1. Sections 22A-2 through 22A-13, 22A-15 through 22A-17, 22A-19 through 22A-21, 22A-26, 22A-27, 22A-30, 22A-31 are amended as follows:

22A-2. Findings and purpose.

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

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

(1) save, maintain, and plant trees and forested areas for the benefit of County residents and future generations;

(2) establish procedures, standards, and requirements to minimize [tree] forest loss as a result of development and to protect trees and forests during and after construction or other land disturbing activities;

(3) maximize forest retention;

(4) establish procedures, standards, and requirements for afforestation and reforestation of land subject to an application for development approval or a sediment control permit;

[(4)] (5) establish a fund for future [tree] forest conservation projects, including afforestation and reforestation; and
[(5)] (6) provide a focused and coordinated approach for County forest conservation activities.


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

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

* * *  

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

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

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

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**Declaration of [intent] 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] to comply with Sections 22A-10(b)-(c);

(2) no activity requiring a Forest Conservation Plan will occur on site within 7 years after the proposed activity is completed; and
will not circumvent the requirements of this Chapter.

* * *

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

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

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

(1) [areas] any area that [have] has at least 100 live trees per acre with at least [50 percent] 50% of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; [and]

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

(3) any area where at least one layer is not present because of site conditions, pest predation, human impacts, or non-native species.

*Forest* does not include an orchard.

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

* * *

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

* * *

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

* * *

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

Net tract area means the total area of a tract, including both forested and unforested areas, to the nearest 1/10 acre, reduced by road or utility rights-of-way which are unrelated to and will not be improved as part of the development application. However, in any agriculture [and] or resource [areas] area, 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. 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.
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**Person** means:

(1) the federal government, the state, any county, [municipal corporation] municipality, or other political subdivision of the state, or any of their units[.], 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. ]

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

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

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

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

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**Tree Expert** means person who meets all applicable requirements of Title 5, Subtitle 4 of the Natural Resources Article of the Maryland Code.
Tract means [the property subject to a development application or a sediment control permit, as] one or more adjacent or confronting lots that are described by deed or record plat.

* * *

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

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

* * *

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

[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;]

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

[(c) a person who performs any cutting or clearing, or any other land disturbing activity that would directly threaten the viability of, any champion tree, wherever located;]
[(d) 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);]
[(e) highway construction not exempt under subsections 22A-5(e) or (p);
and]
[(f) 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 forest or any champion tree, and who believes that the cutting, clearing, or
grading is exempt under Section 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.]

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

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

(b) Level 1 Review. A person must submit to a Level 1 Review if:
(1) the person is required by law to obtain approval for a
development plan, diagrammatic plan, project plan, preliminary
plan of subdivision, or site plan;
(2) the person is required by law to obtain a sediment control
permit or approval of a special exception on a tract of land
which is 40,000 square feet or larger, and is not otherwise required to obtain an approval under subsection (b)(1);

(3) the person proposes to perform any cutting or clearing, or any other land disturbing activity that would threaten the viability of any champion tree, wherever located;

(4) the person is subject to mandatory referral or a park facility plan on a tract of land which is 40,000 square feet or larger and is not excluded under subsection (c) or (d);

(5) the person proposes highway construction not excluded under subsection (c) or (d); or

(6) a public or private utility proposes a cumulative limit of disturbance of 40,000 square feet or more for all stages of work in a public right-of-way or utility easement.

(c) Level 2 Review. A person must submit to a Level 2 Review if the person proposes:

(1) to build, on a single lot which is 40,000 square feet or larger, a house, an addition to a house, or an accessory structure (such as a pool, tennis court, or shed), if the activity does not result in cutting, clearing, or grading:

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

(B) any forest in an environmental 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 a previously approved forest conservation plan or tree save plan;
(2) a minor subdivision under Section 50-35A(a)(2)-(3) involving a
lot line adjustment, conversion of an existing recorded outlot, or
joining 2 or more existing residential lots into one lot, if:

(A) 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

(B) development does not result in cutting, clearing, or
grading:

(i) more than 40,000 square feet of forest;

(ii) any forest in an environmental buffer;

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

(iv) any specimen or champion tree; or

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

(3) a modification to existing non-residential developed property if
less than 5,000 square feet of forest will be cleared; or

(4) a State or County highway construction activity that is subject
to either Section 5-103 of the Natural Resources Article of the
Maryland Code or Level 1 Review.

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

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

(A) plating requirements under Section 50-9; and
(B) a requirement to obtain a sediment control permit under Section 19-2(c)(2).

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

(2) proposes a tree nursery;

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

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

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

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

(5) proposes a government project reviewed for forest conservation purposes by the State Department of Natural Resources under state law:
conducts routine maintenance of public utility easements and rights-of-way, and routine maintenance of stormwater management facilities that are not subject to an existing conservation easement, except for clearing access roads;

(7) conducts utility or other work required in an emergency;

(8) conducts noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code; or

(9) cuts or clears a public utility right-of-way or land for an electric generating station licensed under state law if a certificate of public convenience and necessity was issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code.


[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) does not require a special exception;

(2) does not result in the 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 a previously approved forest conservation plan or tree save plan; and]
(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;]

[(b) an agricultural activity that is exempt from both platting requirements under Section 50-9 and requirements to obtain a sediment control permit under Section 19-2(c)(2). Agricultural support buildings and related activities are exempt only if built using best management practices;]

[(c) a tree nursery;]

[(d) (1) a commercial logging and timber harvesting operation, including any harvesting conducted under the forest conservation and management program under Section 8-211 of the Tax-Property Article of the Maryland Code that:

(A) is completed before July 1, 1991, or is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is not the subject of an application for development within 5 years after the sediment control permit has been issued;

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

(C) has received a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19.
(2) The Department of Permitting Services must send the Planning Director a copy of all sediment control permits issued for commercial logging and timber harvesting operations.

(3) The requirements of this subsection apply to commercial logging and timber harvesting operations on agricultural land;

(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;

(f) a governmental project reviewed for forest conservation purposes by the State Department of Natural Resources under the Code of Maryland Regulations;

(g) except for the clearing of access roads, routine maintenance of public utility easements and rights-of-way;

(h) utility or other work that is of an emergency nature;

(i) noncoal surface mining regulated under Title 7 of the Natural Resources Article of the Maryland Code;

(j) a sediment control permit approved before July 1, 1991, or if amended after that date at the initiation of the permittee, that does not result in the cutting of more than 5,000 additional square feet of forest;

(k) any lot covered by a preliminary plan of subdivision or site plan that 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 (1);

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

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

(1) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and]
(2) both the grantor and grantee file a declaration of intent;]

[(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) 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 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;]

[(o) The cutting or clearing of public utility rights-of-way or land for
electric generating stations licensed under Section 54A and 54B or
Section 54I of Article 78 of the Maryland Code, if:

(1) any required certificates of public convenience and necessity
have been issued in accordance with Section 5-1604(f) of the
Natural Resources Article of the Maryland Code; and

(2) the cutting or clearing of the forest is conducted so as to
minimize the loss of forest.]
[(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 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 clearing will not exceed a total of 5000 square feet of forest or include any specimen or champion tree;]

[(r) an equestrian facility located in an agricultural zone that is exempt from platting requirements under Section 50-9, whether or not a sediment control permit is obtained under Section 19-2. Article II
does not apply to any equestrian support building or related activity 
only if the building is built using best management practices. 
However, Section 22A-6(b) applies if any specimen or champion tree would be cleared. This exemption does not permit any forest or tree that was preserved under a previously-approved forest conservation plan or tree save plan to be cut, cleared, or graded unless the previously-approved plan is amended to allow that activity. This exemption does not apply if:

(1) any forest was cleared during an agricultural activity, as defined in subsection (b), during the 5 years before any exemption under this subsection is claimed;

(2) any forest or tree located in a stream valley buffer would be cleared;

(3) on-site forest retention does not equal at least 25% of the tract area or all forest existing when the exemption is claimed, whichever is less; or

(4) on-site forest retention does not equal at least 50% of any net tract area when more than 50% of that tract is existing forest.

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

[(s)]

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

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

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

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

   (A) any required approval or permit that has not been obtained from another governmental agency is not available solely because of the inaction by the other governmental agency; and
   (B) the applicant has used best efforts to obtain the permit or approval.]

[(b) If final plat approval will not be required under subsection (a) of this Section because the development is on a recorded lot or for other reasons, the development will be subject to the requirements of this
Chapter at the time of any subsequent application for a sediment control permit.]

[(c) If the Planning Board 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, the Board may waive additional submission requirements at the time of any later sediment control permit application. However, the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security.]

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

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

[(a) General.

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

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

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[(b) Calculation Rules; Exemption.

(1) To determine the applicability of this Chapter under Section 22A-4 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 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 champion tree, or trees or forest that are subject to a previously approved forest conservation or tree save plan. Any later stages of the work must be identified at the time of the initial sediment control permit application.

(3) If the exemption does not 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 champion tree must be based on the size and character of the tree.]


(a) General.

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

* * *

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

* * *


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

[(b) Forest Stand Delineation]

(1) Natural Resource Inventory/Forest Stand Delineation.

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

(i) topographic, hydrographic, soils, and geologic information;

(ii) qualitative and quantitative information on trees and forest cover;

(iii) other information or requirements specified in the regulations by regulation or in the 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.

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

(4) An approved forest stand delineation is not valid after 2 years unless a qualified professional recertifies the natural resource inventory/forest stand delineation, or a forest conservation plan has been accepted as complete; or
[(B) the delineation has been recertified by the preparer.]

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

[(1)] (A) 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] Forest Conservation Plan must be signed by a qualified professional and must contain information on the extent and characteristics of:

(i) the trees and forested area to be retained or planted;

(ii) proposed locations for on-site and off-site reforestation;

(iii) scheduling;

(iv) protective measures;

(v) a binding maintenance agreement effective for at least 2 years;

(vi) a binding agreement to protect forest conservation areas, and other information or requirements specified in the regulations or technical manual.

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

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

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

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

(1) Tree Inventory.

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

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

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

(iii) document the diameter of each tree; and

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

(B) The Planning Director may waive any requirement for information that is unnecessary for a specific site.
(C) An approved Tree Inventory is not valid after 2 years unless a certified arborist or a tree expert recertifies the Tree Inventory or a Tree Protection Plan is approved.

(2) **Tree Protection Plan**

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

(i) each tree to be retained and removed;

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

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

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

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

(3) **Declaration of Intent.**

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

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

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

(i) submit to a Level 1 review; and
(ii) pay a penalty fee established by fee schedules approved by Council resolution per square foot of forest cut or cleared, not less than the minimum set by state law.

(c) Level 3 approval required.

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

(2) Declaration of Intent.

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

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

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

(i) submit to a Level 1 review; and

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


(a) [General] Level 1 Review.

(1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 1 review must submit to the Planning Director a Natural Resource Inventory/Forest Stand Delineation. Within 30 days after receiving the Natural Resource Inventory/Forest Stand Delineation, the Director must
notify the person whether the Natural Resource Inventory/Forest Stand Delineation is complete. An incomplete application must be denied. If the Director does not act on the submission within 30 days, the delineation must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances.

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

(3) Final Forest Conservation Plan.

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

(B) Within 45 days after receiving the final Forest Conservation Plan, the Planning Director must notify the applicant whether the Plan is complete and approved. If the applicant is not notified within 45 days, the Plan must be treated as approved. The Director may extend the deadline for an additional 15 days in extenuating circumstances.
(4) Coordination and Special Provisions.

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

(B) Special exceptions. If a special exception application is subject to this Chapter, the applicant must submit a Level 1, Level 2, or Level 3 review to the Planning Director before the Board of Appeals may consider the application for the special exception. The Board of Appeals must review the preliminary forest conservation plan along with the special exception application and must not
approve a special exception that conflicts with the preliminary forest conservation plan. A final forest conservation plan must be submitted before an applicant obtains a sediment control permit, or when a preliminary plan of subdivision or site plan application is filed, if required.

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

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

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

[(B)] (ii) 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

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

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

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

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

(2) Forest conservation plan.

(A) Application. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning
Director. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the Planning Director in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, an applicant, with the approval of the Planning Board, may submit a preliminary forest conservation plan at the time of the development approval and a final forest conservation plan before issuance of a sediment control permit for the tract.

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

(C) Condition of approval. The forest conservation plan will be reviewed by the Planning Board concurrently with the
development plan, project plan, preliminary plan of subdivision or site plan, as appropriate. The forest conservation plan, as may be amended by the Board, must be made a condition of any approval of the development application. For a development plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-D-1.4.]

(c) Project requiring special exception approval.

(1) Forest stand delineation. If a special exception proposal is subject to the requirements of this Chapter, the applicant must submit a forest stand delineation to the Planning Director before the Board of Appeals may consider the application for the special exception. The deadlines for reviewing a forest stand delineation are the same as in paragraph (b)(1) of this Section.

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit a preliminary forest conservation plan to the Planning Director. The Board of Appeals must consider the preliminary forest conservation plan when approving the special exception application and must not approve a special exception application that is in conflict with the preliminary forest conservation plan. A final forest conservation plan must be submitted before obtaining a sediment control permit, or at the time of preliminary plan of subdivision or site plan application, if required. The deadlines for reviewing a final forest
conservation plan are the same as in paragraph (d)(2) of this Section.

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

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

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

(3) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until:
(A) a final forest conservation plan, if required, is approved;
and
(B) any financial security instrument required under this
Chapter is provided.]

Project requiring mandatory referral.

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

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

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

Level 2 Review. A person subject to a Level 2 review must submit to
the Planning Director the Tree Inventory with a Declaration of Intent.
Within 30 days after receiving the Tree Inventory and Declaration of
Intent, the Planning Director must notify the person whether the Tree
Inventory is complete. An incomplete application must be denied. If
the Planning Director fails to act on the submission within 30 days,
the Tree Inventory will be treated as approved. The Planning Director may extend the deadline for an additional 15 days for extenuating circumstances.

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

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

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

1. on site reforestation or afforestation;
2. offsite forest planting within the same watershed;
3. on site non-native and invasive management control with supplemental planting;
4. forest mitigation banks;
5. in-lieu fee; and
6. on site landscaping with an approved plan.
(b) How to Calculate the Requirements.

(1) Table.

| Land Use [Category| Type] | [Forest] Conservation Threshold | [Required Afforestation Threshold] |
|-----------------|-------------------------------|-----------------------------------|
| Agricultural and Resource Areas | 50% | 20% |
| Medium Density Residential Areas | [25%] | 30% | [20%] | 25% |
| Institutional Development Areas | [20%] | 25% | [15%] | 20% |
| High Density Residential Areas | [20%] | 25% | [15%] | 20% |
| Mixed-use Development Areas | [15-20%] | 20-25% | [15%] | 20% |
| Planned unit Development Areas | [15-20%] | 20-25% | [15%] | 20% |
| Commercial and Industrial Areas | [15] | 20% | [15%] | 20% |

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

[(b) Retention.

(1) The primary objective of the forest conservation plan should be to retain existing forest 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 Planning Director finds that:

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

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

(C) the development proposal cannot be reasonably altered.

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

(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;

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

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

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

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

[(2)] (B) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of
forest removed must be reforested at a ratio of $\frac{1}{4}$ acre
planted for every one acre removed.

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

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

[(d)] (3) Afforestation.

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

[(2)] (B) Afforestation [should] must be accomplished by the
planting, maintenance, and establishment of forest
cover[. However, if the applicant] unless a person
demonstrates to the satisfaction of the Planning Board or
Planning Director, as the case may be[, that afforestation
using forest cover is inappropriate]. Afforestation may
be satisfied by tree cover for a site because of its location
in an urban setting, redevelopment context, high-density
residential, commercial, industrial, planned unit
development, or institutional area (as defined in Section
22A-3), or similar reason, afforestation requirements may
be satisfied by tree cover.

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

(1) Priorities for reforestation and afforestation.

(A) [Preferred sequence.] Except as provided [in] by
regulation or 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, 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] identified
in subsection (a).

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

(i) to achieve the objectives of a master or sector plan
or other County land use policies or to take
advantage of opportunities to consolidate forest conservation efforts;

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

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

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

(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] may be used if
the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that on-site afforestation is inappropriate.

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 is preferred. Unless the Planning Board or Planning Director order otherwise, the required use of natural regeneration under this Chapter supercedes any prohibition under Chapter 58.

Location requirements. Required reforestation or afforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in either the county or watershed in which the project is located.

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 is complete.

(d) Planned Unit Developments; Other Staged Development. Notwithstanding any other provision of this Section, the Planning Board may allow any afforestation or reforestation requirement for a planned unit development to be calculated and satisfied within the total area covered by the development plan or project plan instead of
the net tract area. Similarly, the Planning Board may allow any
afforestation or reforestation requirement applicable to a staged
development subject to a single preliminary plan of subdivision but
with separate site plan reviews for each stage to be calculated and
satisfied using the total area covered by the preliminary plan of
subdivision.

(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.

(2) **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 development 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 Section 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)] (b), 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)] (E) If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping and street trees.

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

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

(2) **Specific development situations.** Except as specified in subsection [(f)](e), the Planning Board or Planning Director may allow an applicant to pay into the County Forest Conservation Fund instead of providing afforestation[, or 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)](b)(3)(B), the applicant may pay the fee instead of using tree cover to meet any afforestation requirement.

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

* * *

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

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

\[\text{(i) (h) Financial Security.}\]

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

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

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

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

\[\text{* * * * *}\]

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

(4) *Amount required.*

(A) If the financial security is required under [subparagraph] subsection (1)(A) [of this subsection], the security instrument must be in an amount equal to:
(i) the in lieu fee rate; or
(ii) the estimated cost of afforestation, reforestation, and maintenance [applicable to the section of the tract subject to the land disturbing activity] of planted areas as well as non-native and invasive management.

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

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

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

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

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

* * *

22A-13. Forest mitigation banks. (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) A person can create a forest mitigation bank by permanently protecting:

(1) existing forest;

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

or

(3) a combination of the two.

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

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

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

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

(2) all information required by subsection [22A-10(c)] 22A-10(b)(2) for a [forest conservation plan] 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)] (f) Forest mitigation banks must be established in accordance with the priority areas described in subsection [22A-12(e)(3)] 22A-12(b)(2), or in areas identified in a master plan or functional plan.

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

[(g)] (h) 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-15. Inspections and notification.

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

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

(c) Required inspections.

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

(2) The Planning Department must conduct field inspections of a site [tract] subject to an approved [forest conservation plan]
Forest Conservation Plan. The inspections should take place as follows:

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

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

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

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

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

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

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

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

(F) at the end of the 5-year maintenance period to determine the level of compliance with the provisions of the
planting plan and, if appropriate, authorize release of the financial security.

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

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

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

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

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

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

[(1) At least 2 working days before starting any land disturbing activities associated with the forest conservation plan, a person must notify the Planning Department. The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent directives in the field relating to the forest conservation plan and sediment control activities.]
(2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the Department may schedule the second inspection specified under paragraph (c)(2) of this Section.


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

(1) within 5 years, an application for a development or other approval regulated by this Chapter is submitted for the tract or lot covered by the exemption; or

(2) the person otherwise violates this Chapter or the declaration of intent.]

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

(1) meet the forest conservation threshold as would have been required;

(2) pay an administrative civil penalty under Section 22A-16(d) for the area of forest cut or cleared under the exemption; or

(3) both.

[(a) General. Except as provided under subsections (c) and (d) of this Section, the requirements for notice, public hearing, and administrative decision-making for the associated development approval must be followed when reviewing a forest stand delineation or forest conservation plan.]

[(b) Forest conservation plans and variances approved by the Planning Board or District Council.

(1) A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a forest conservation plan (including a request for a variance) may file a judicial appeal of the final administrative action on the development approval in accordance with Subtitle B of the Maryland Rules of Procedure and any other law applicable to the proceeding.

(2) A person aggrieved by the decision of the District Council on the approval, denial, or modification of a forest conservation plan (including a request for a variance) proposed in conjunction with a development plan may file a judicial appeal of the action on the development plan in accordance with Division 59-H-8.]

[(c) Forest stand delineations and forest conservation plans approved by the Planning Director.

(1) Appeal to Planning Board. Upon receipt of the Planning Director's written decision on a forest stand delineation or forest conservation plan, an applicant has 30 days in which to appeal to the Planning Board.

(2) Hearing; decision. The Planning Board must hold a hearing on the appeal and inform the applicant in writing of its decision.
The Board must consider the appeal de novo. For purposes of judicial review, the decision of the Planning Board constitutes final agency action.

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

[(d) Administrative enforcement actions.

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

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

(3) Decision. The Planning Board must inform the alleged violator in writing of its decision on an administrative enforcement
action. The Board's decision constitutes final agency action for purposes of judicial review.

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

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

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

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

(b) Forest Conservation or Tree Protection Plans and variances approved by the Planning Board. A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a Forest Conservation or Tree Protection Plan (including a request for a variance) may file a petition for judicial review of the administrative agency decision on the development approval in accordance with the
Maryland Rules of Court and any other law applicable to the proceeding.


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

* * * * *

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

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

(1) will confer on the applicant a special privilege that would be denied to other applicants;

(2) is based on conditions or circumstances which are the result of the actions by the applicant;

(3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
(4) will violate State water quality standards or cause measurable degradation in water quality.

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

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

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

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


(a) [Adoption] Regulations. The Planning Board must adopt regulations, including 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, may be adopted under Method (3) if it is consistent with this Chapter. The regulations must include procedures to amend a forest conservation plan and a declaration of intent.

(b) Technical manual. The Planning Director must prepare a technical manual that must include guidance and methodologies for:
(1) preparing and evaluating a [forest stand delineation and natural resource inventory] Natural Resource Inventory/Forest Stand Delineation;

(2) preparing and evaluating a [forest conservation plan] Forest Conservation Plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;

(3) preparing and evaluating a Tree Inventory and Tree Protection Plan;

(4) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;

(5) inspection and monitoring [and enforcement] of site for compliance with [forest conservation plans] Forest Conservation and Tree Protection Plans; and

(6) other appropriate guidance for program requirements consistent with this Chapter and the regulations.

(c) Development agreements; Conservation easements. The Planning Board may in the regulations require developer agreements, conservation easements, land trusts, covenants, and deed restrictions as part of an approved forest conservation plan.

(d) Administrative fee. The Planning Board must [charge] establish a fee [to cover] schedule that at least partially covers the costs of administering this Chapter, including review of submittals and field inspections. The fee 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]. Fee schedules may be reviewed as needed.

[(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) (d) Reports. The Planning Board must make all 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.

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

[(h) Sediment Control Permit Applications. The Planning Director and the Director of the Department of Environmental Protection should develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person who obtains a sediment control permit for land disturbing activities on less that 40,000 sq. ft.
of land and who later seeks preliminary plan of subdivision approval for the same land. These procedures may include requiring an applicant for a sediment control permit to submit a declaration of intent enforceable under Section 22A-19.]

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 instead of planting] Forest Conservation Fund must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the [general fund] General Fund. The permanent preservation of priority forests, including 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 planting.

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

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

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

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

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

(1) develop a comprehensive County conservation and management strategy, including programs designed to promote afforestation and reforestation in the County, and the survival of historic trees and any endangered tree species;

(2) advise the County Executive and County Council on the effectiveness of County programs for controlling tree pests and diseases;

(3) review and approve proposed commercial logging and timber harvesting operations under Article II;

(4) review variance requests and reports under Article II;

(5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and
any other duties required by law or assigned by the County Executive.]

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

[(a) *Definition.* In this section “Committee” means the Forest Conservation Advisory Committee.]

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

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

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

(A) Landscape architects;

(B) Arborists and urban foresters;

(C) Horticulturists and representatives from the nursery industry;

(D) Persons directly engaged in agriculture;

(E) Persons directly involved in the building industry;

(F) Members of citizen groups;

(G) Member of environmental and conservation organizations; and

(H) Representatives of public utility companies.

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

(A) Economic Development;

(B) Environmental Protection; and

(C) Public Works and Transportation.
(3) The Executive must invite a representative from each of the following agencies to serve as an ex officio member;

(A) The County Planning Board; and

(B) The Washington Suburban Sanitary Commission.

(4) The term of each member is 3 years and expires on December 31. After an appointment to fill a vacancy before a term expires, the successor serves the rest of the unexpired term.

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

(1) All members of the Committee are voting members.

(2) Each January, the Executive may designate a chair and vice-chair from among the Committee’s public members to serve a 1-year term. If the County Executive does not designate a chair or vice-chair by February 15, the Committee members must select a chair and vice-chair.

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

(4) A member must serve without compensation. However, a member may request reimbursement for mileage and dependent care costs at rates established by the County.]

[(e) Duties.

(1) Advise the Executive, Council, Planning Board, and any other relevant agency on forestry policy issues;

(2) Propose to the Executive, Council, Planning Board, and any other relevant agency, proactive forestry policies, laws, and guidelines;

(3) Recommend a comprehensive approach to urban forestry;
(4) Advise on a tree inventory;
(5) Review and comment on policies and programs related to forestry;
(6) Promote and seek funding for a sustained forestry program;
(7) Promote and foster a strong sense of community through urban forestry;
(8) Communicate with other boards, agencies, and community residents about forestry issues; and
(9) Promote volunteerism and act as a general information source.]

[(d) *Annual Report.* By October 1 each year, the Committee must submit to the Executive, Council, Planning Board, and any other relevant agency, an annual report on its functions, activities, accomplishments, and plans and objectives.]

[(e) *Advocacy.* The Committee must not engage in any advocacy activity at the State or federal levels unless that activity is approved by the Office of Intergovernmental Relations.]

[(f) *Staff.* The Chief Administrative Officer must provide appropriate staff to the Committee.]

Approved:

Michael Knapp, President, County Council

Approved:

Isiah Leggett, County Executive
This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date