

Expedited Bill No. 25-22  
Concerning: Forest Conservation – Trees  
Revised: 03/21/2023 Draft No. 4  
Introduced: September 13, 2022  
Enacted: March 21, 2023  
Executive: April 3, 2023  
Effective: April 3, 2023  
Sunset Date: none  
Ch. 6, Laws of Mont. Co. 2023

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Then-Council President Alborno at the Request of the Planning Board

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**AN EXPEDITED ACT** to:

- (1) exclude activities in the Commercial Residential (CR) zone from qualifying for certain Forest Conservation Plan (FCP) exemptions;
- (2) exclude any development that occurs within an environmental buffer from qualifying for a FCP exemption;
- (3) change the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD);
- (4) increase the amount of forest required to be preserved in lower density land use categories;
- (5) increase forest planting requirements in higher density land use categories;
- (6) increase reforestation ratios;
- (7) require planting of forest in all unforested stream valley buffers;
- (8) amend the requirements where forest retention required by the Forest Conservation Law is not possible;
- (9) broaden the terms of maintenance and management agreements to include required maintenance for areas of existing forest retained to meet forest mitigation requirements;
- (10) expand mitigation requirements for variance trees to include mitigation for variance trees located within a forest;
- (11) allow landscaping to meet both reforestation or afforestation requirements in equity focus areas;
- (12) update the allowable types of forest mitigation banks allowed in the County per recent amendment to the State's Forest Conservation Act; and
- (13) generally amend Chapter 22A.

By amending

Montgomery County Code

Chapter 22A, Forest Conservation – Trees

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

**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:*

4 \* \* \*

9 \* \* \*

Biohealth priority campus plan means a plan that qualifies as a Biohealth Priority Campus under Section 3.5.8.E of Chapter 59 and is approved under Section 7.3.6 of Chapter 59.

\* \* \*

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

Environmental guidelines mean the Guidelines for Environmental Management of Development in Montgomery County, Maryland (M-NCPPC), as amended.

*Equestrian Facility*: A] means 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.

\* \* \*

*Forest conservation threshold* means the percentage of the net tract area at which the reforestation [requirement changes from a ratio of ¼ acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed] ratio increases as specified in Section 22A-12.

\* \* \*

*Forest mitigation banking* means the intentional [preservation,] restoration[,] or creation of forests undertaken expressly to provide credits for afforestation or reforestation requirements.

\* \* \*

*Minor subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and submitted for approval by the Planning Director under Division 50.7 of Chapter 50.

\* \* \*

*Park development plan* means an application submitted by the Montgomery County Parks Department for the construction and development of a specific park.

*Patuxent Primary Management Area (PMA)* means [[areas]] an area of environmental importance within the Patuxent River watershed, as further defined in the [[Environmental]] environmental guidelines.

\* \* \*

*Preliminary plan of subdivision* means a plan for a proposed subdivision [or resubdivision] prepared and submitted for approval by the Planning Board under Division 50.4 of Chapter 50 before preparation of a subdivision plat.

*Project plan* means [a plan or] an amendment to a project plan referred to in Section 7.7.1.B of Chapter 59 [or a sketch plan approved under Section 7.3.3 of Chapter 59].

\* \* \*

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

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

\* \* \*

#### **22A-4. Applicability.**

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

- (a) a person required by law to obtain an approval or amendment to a development plan, diagrammatic plan, project plan, floating zone plan, sketch plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, or site plan;

\* \* \*

#### **22A-5. Exemptions.**

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 occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines;

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

\* \* \*

(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] subdivision is not exempt. This subsection does not apply to a planned unit development subject to subsection (l);

\* \* \*

(n) any minor subdivision under Division 50.7 of Chapter 50 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); development does not occur within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and development does not result in the cutting, clearing, or grading of:

\* \* \*

(s) (1) an activity occurring on a tract of land that is less than 1.5 acres and that [[meets all of the following criteria]]:

(A) is not located within the Commercial Residential (CR) zone classification;

(B) has [with] no existing forest, [[or]] existing specimen, or champion tree[, and];

(C) would not result in an [the] afforestation [requirements would not] requirement that [exceed] exceeds 10,000 square feet; and

(D) would not result in development within an environmental buffer, except for the allowable uses stated in the environmental guidelines; or

(2) an activity occurring on a tract of land that is less than 1 acre and that [[meets all of the following criteria]]:

(A) is not located within the Commercial Residential (CR) zone classification;

(B) [that will] would not result in the clearing of more than a total of 20,000 square feet of existing forest, or any existing specimen or champion tree; [, and]

(C) would not result in a reforestation [requirements] requirement that [would not exceed] exceeds 10,000 square feet;[.]

(D) would not result in development within an environmental buffer, except for the allowable uses stated in the environmental guidelines; and

(E) [Forest]preserves forest in any [priority area] on-site floodplains, stream buffers, steep slopes, critical habitats, and areas designated as priority save areas in a master plan or functional plan [[must be preserved.]][]; and];

(t) a modification to a:

(1) non-residential developed property if:

(A) no more than 5,000 square feet of forest is ever cleared at one time or cumulatively after an exemption is issued;

(B) the modification does not result in the cutting, clearing, or grading of any forest in a stream buffer or forest located on property in a special protection area which must submit a water quality plan;

(C) the development does not occur within an environmental buffer, with the exception of the allowable uses stated in the environmental guidelines;



155                   [(C)](D)     the modification does not require approval of a  
156                   preliminary plan, administrative subdivision plan, or  
157                   conditional use/special exception;

158                   [(D)](E)     the modification does not increase the developed  
159                   area by more than 50%, and any existing principal  
160                   building, as defined in Chapter 59, is retained; and

161                   [(E)](F)     the pending development application does not  
162                   propose any residential uses; or

163           (2)     residential developed property if:

164                   (A)     forest is not impacted or cleared;

165                   (B)     the [modification is not located in a stream buffer]  
166                   development does not occur within an environmental  
167                   buffer, with the exception of the allowable uses stated in  
168                   the environmental guidelines;

169                                 \*         \*         \*

170     **22A-6. Special provisions – Exemptions; tree save plans; and highway projects.**

171           (a)     *Tree save plan requirements.* An activity or development that would be  
172                   exempt under Section 22A-5, and that would impact a significant,  
173                   specimen, or champion tree, requires the approval of a tree save plan[,  
174                   which may] The tree save plan must require tree preservation or  
175                   planting of mitigation trees at a ratio of 1 caliper inch replaced for every  
176                   4 inches of trunk diameter removed, measured at 4.5 feet above the  
177                   ground, [for loss of individual trees. The plan requirements must be]  
178                   based on the size and character of the trees to be cleared. If trees to be  
179                   cleared are part of an existing scenic buffer between public parkland

and a proposed development, trees that [which] are smaller than specimen size may be included in the tree save plan.

- (b) *Exemption expiration.* A confirmed exemption is valid for 5 years from the date the exemption is confirmed [that has not started any authorized land disturbance within 5 years from the date of approval of the exemption is expired], unless the confirmed exemption pertains to a subdivision with a validity period of more than 5 years, in which case [. If the subdivision has a validity period of more than 5 years,] the confirmed exemption does not expire until the end of the subdivision validity period. If site development activities have not been authorized by the forest conservation inspector to commence before the expiration date, including inspections detailed under 22A-15(c)(2)(A) and (B), the approved exemption will expire at that time.

\* \* \*

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

### *(a) General.*

- (1) This Section applies to construction of a highway or by the County or a municipality as part of an approved Capital Improvements Program project.
- (2) The construction should minimize forest removal, land disturbance, and loss of significant, specimen, or champion trees to the extent possible while balancing other design, construction, and environmental standards. The constructing agency must make a reasonable effort to minimize land disturbance to avoid the cutting or clearing of trees and other woody plants.

(b) If the forest to be cut or cleared for a County highway project equals or exceeds 20,000 square feet, the constructing agency must reforest a suitable area at the rate of one acre of protected reforestation for each acre of forest cleared.

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

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

\* \* \*

#### 22A-10. General

\* \* \*

(b) *Forest stand delineation.*

\* \* \*

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

(A) a forest conservation plan or a plan under Section 22A-9 has been accepted as complete; or

(B) the delineation has been recertified by the preparer, which may occur within one year after the expiration date if the requirements of Section 22A.00.01.06.F, as amended, of the Forest Conservation – Trees Regulations are met.

(5) An approved forest stand delineation may not be amended. A new forest stand delineation must be submitted for review in order to make any changes.

\* \* \*

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

(a) [General] General.

(1) ~~[[Application]]~~ Application. The submission of a development plan, floating zone plan, project plan, sketch plan, subdivision plan, site plan, biohealth priority campus plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under this Section must include an approved forest stand delineation or a confirmed exemption from submitting a forest conservation plan under Section 22A-5.

~~[(1)]~~(2) ~~[[Coordinated with project review]]~~ 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, floating zone plan, project plan, [sketch plan,] subdivision plan, site plan, biohealth priority campus plan, special exception, conditional use, mandatory referral, park development plan, or sediment control permit under 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, other relevant regulatory agencies, and entities that will provide public utilities to 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.

256 [(2)](3) [[Modification to an approved plan]] Modification of an  
 257 approved plan. The Planning Director may approve  
 258 modifications to an approved forest conservation plan that are  
 259 consistent with this Chapter if:

260 (A) field inspections or other evaluation reveals minor  
 261 inadequacies of the plan; or

262 (B) each modification is a minor amendment, as defined in  
 263 Section 22A.00.01.13.A.1, as amended, of the Forest  
 264 Conservation – Trees Regulations, and does not impact  
 265 any forest in a priority area (such as substituting an on-site  
 266 conservation area for an equal or greater on-site area of  
 267 similar character, or substituting a marginal on-site  
 268 conservation area for equal or greater amount of off-site  
 269 priority area); or

270 (C) action is otherwise required in an emergency situation.

271 Any other modification, including major amendments, must be  
 272 approved by the agency that approved the forest conservation  
 273 plan.

274 [(3)](4) [[ Notice]] Notice. Public posting and written notice of forest  
 275 conservation plan applications must be provided by applicants as  
 276 specified in [regulation] Section 50/59.10.01.04, as amended, of  
 277 the Administrative Procedures for Development Review.

278 (b) *Project requiring development plan, floating zone plan, project plan,*  
 279 *[sketch plan,] preliminary plan of subdivision, biohealth priority*  
 280 *campus plan, or site plan approval.*

(1) ~~[[Forest stand delineation]]~~ Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation [with the] and the forest stand delineation must be approved before the applicant ~~[[can]]~~ may submit an application for a development plan, floating zone plan, project plan, [sketch plan,] preliminary plan of subdivision, biohealth priority campus plan, 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. The applicant must submit revised drawings to address comments within 90 days from the date the Planning Director sends comments to the applicant. If the applicant fails to submit revised drawings, the application is deemed withdrawn. The Planning Director may provide for one extension of this deadline for extenuating circumstances.

(2) ~~[[Forest conservation plan]]~~ Forest conservation plan.

(A) ~~[[Application]]~~ Application. After being notified that the forest stand delineation is complete and correct, the applicant must submit a forest conservation plan to the Planning Director with the related application for a development plan, floating zone plan, project plan, preliminary plan of subdivision, biohealth priority campus

307 plan, or site plan. If the development proposal will require  
 308 more than one [of the] [approvals] approval subject to this  
 309 subsection, the applicant must submit a preliminary forest  
 310 conservation plan to the Planning Director in conjunction  
 311 with the first approval, and a final forest conservation plan  
 312 in conjunction with the last approval; however, if multiple  
 313 approvals subject to this subsection are submitted to the  
 314 Planning Director for simultaneous review, the applicant  
 315 need [[only]] submit only a final forest conservation plan  
 316 that will be considered for each relevant application. If  
 317 only one approval subject to this subsection is required, an  
 318 applicant must submit [a preliminary forest conservation  
 319 plan and] a final forest conservation plan at the time of the  
 320 development application.

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

(C) ~~[[Approval]]~~ Approval. The Planning Board must review and act on the forest conservation plan concurrently with the development plan, floating zone plan, project plan, [sketch plan,] preliminary plan of subdivision, biohealth priority campus plan, or site plan, as appropriate. Compliance with the preliminary forest conservation plan, when required and as amended by the Board, must be made a condition of any approval of the first applicable development application. Compliance with the final forest conservation plan, as amended by the Board, must be made a condition of any approval of the last development application. For a development plan or a floating zone plan, a Planning Board recommendation to the District Council on the preliminary forest conservation plan must be made under Section 59-7.2.1. A final forest conservation plan must be approved by the Planning Board or Planning Director, as appropriate, before the Planning Board approves a record plat.

(c) *Project requiring special exception or conditional use approval.*

(1) ~~[[Forest stand delineation]]~~ Forest stand delineation. If a special exception or conditional use 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] paragraphs (a)(1) and (b)(1) of this Section.

- (2) ~~[[Forest conservation plan]]~~ 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 or conditional use application and must not approve a special exception or conditional use application that conflicts 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]]~~ Forest stand delineation. If an application for a sediment control permit ~~[[may]]~~ might 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] paragraphs (a)(1) and (b)(1) of this Section.

(2) [[Forest conservation plan]] 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 further for extenuating circumstances.

(3) [[Issuance of sediment control permit]] Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until a final forest conservation plan, if required, is approved.

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

(1) [[Forest stand delineation]] Forest stand delineation. A person seeking mandatory referral or a park development plan 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] paragraphs (a)(1) and (b)(1) of this Section.

(2) ~~[[Forest conservation plan]]~~ Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a final forest conservation plan. The Planning Board must consider the final forest conservation plan when reviewing the mandatory referral application or the park development plan.

(3) ~~[[Issuance of a sediment control permit]]~~ 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.

(f) *Project requiring sketch plan approval.*

(1) ~~[[Forest stand delineation]]~~ Forest stand delineation. For any sketch plan application filed on or after November 14, 2017, the applicant must submit to the Planning Director, for approval, a forest stand delineation [reviewed concurrently with] before the sketch plan application. The deadlines for reviewing a forest stand delineation are the same as in [paragraph] paragraphs (a)(1) and (b)(1) of this Section. [The forest stand delineation must be approved prior to Planning Board approval of the sketch plan.]

(2) ~~[[Forest conservation plan]]~~ 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 with the first development application after approval of the sketch plan. The deadlines for reviewing a preliminary and final forest conservation plan are the same as in [paragraph] paragraphs (b)(2)(B) and (b)(2)(C) of this Section.

(g) *Project requiring administrative subdivision approval.*

(1) ~~[[Forest stand delineation]]~~ Forest stand delineation. The applicant must submit to the Planning Director a forest stand delineation before the administrative subdivision application. The deadlines for reviewing a forest stand delineation are the same as in [paragraph] paragraphs (a)(1) and (b)(1) of this Section.

(2) ~~[[Forest conservation plan]]~~ 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 Planning Director must consider the preliminary forest conservation plan when approving the administrative subdivision application and must not approve an administrative subdivision application that conflicts with the preliminary forest conservation plan. A final forest conservation plan must be submitted and approved before obtaining a sediment control permit[, ] or record plat, whichever comes first. The deadlines for reviewing a final forest conservation plan are the same as in paragraph (d)(2) of this Section. If the Director defers the approval of an administrative subdivision to the Planning Board, the Planning Board must review and act on the preliminary forest conservation plan with the administrative subdivision plan. The deadlines for reviewing a final forest conservation are the same as in paragraph (b)(2)(C) of this Section.

\* \* \*

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

(a) *Table.*

<b><i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i></b>		
<b><i>Land Use Category</i></b>	<b><i>Forest Conservation Threshold</i></b>	<b><i>Required Afforestation</i></b>
Agricultural and resource areas	[50]55%	20%
<u>Cluster medium-density residential areas</u>	<u>45%</u>	<u>20%</u>
Medium-density residential areas	[25]35%	20%
Institutional development areas	[20]25%	[15]20%
High-density residential areas	20%	15%
Mixed-use development areas	20%	15%
Planned unit development areas	20%	15%
Commercial and industrial use areas	15%	15%

\* \* \*

(b) *Retention.*

\* \* \*

(3) The following trees, shrubs, plants, and specific areas are priority for retention and protection and must be left in an undisturbed condition unless the Planning Board or Planning Director, as appropriate, finds that the applicant qualifies for a variance under Section 22A-21:

(A) Any tree, shrub, or plant that is rare, threatened, or endangered under:

- (i) the Federal Endangered Species Act of 1973 in 16 U.S.C. Sections 1531 — 1544 and in 50 CFR 17;
- (ii) the Maryland Nongame and Endangered Species Conservation Act, Title 10, Subtitle 2A of the Natural Resources Article of the Maryland Code; or
- (iii) COMAR 08.03.08;

(B) Any tree that is:

- (i) 1 inch in caliper or larger and part of a historic site or located within an historic district,
- (ii) associated with a historic structure, or
- (iii) designated by the State or County as a national, State, or County champion tree; [[or]]

(C) Any tree with a diameter, measured at 4.5 feet above the ground, of:

- (i) 30 inches or more; or
- (ii) 75% or more of the diameter, measured at 4.5 feet above ground, of the current State champion tree of that species; or

(D) Any forest in a floodplain or stream buffer, except if the activity occurring within the floodplain or stream buffer is permitted under the environmental guidelines.

\* \* \*

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

- (1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest

conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for every one acre removed if reforestation is occurring within the same 8-digit watershed as the project or a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA); or 2 ½ acres planted for every one acre removed if reforestation is occurring within the County outside of the same 8-digit watershed and outside of a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA).

- (2) 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 ~~[1/4]~~ ½ acre planted for every one acre removed if reforestation is occurring within the same 8-digit watershed as the project or a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA); or 1 acre planted for every one acre removed if reforestation is occurring within the County outside of the same 8-digit watershed and outside of a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA).

\* \* \*

(d) *Afforestation.*

- (1) 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) of this Section.

- (2) Afforestation [should] must be accomplished by the planting of forest cover[. However], unless the applicant demonstrates to the satisfaction of the Planning Board or Planning Director, as the case may be, that afforestation using forest cover is inappropriate 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, in which case afforestation requirements may be satisfied by tree cover.

\* \* \*

(e) *Standards for reforestation and afforestation.*

(1) General requirements.

(A) *Preferred sequence.* Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation is, in general: on-site afforestation or reforestation; off-site afforestation or reforestation; enhancement of existing forest through on-site selective clearing, supplemental planting, or both; acquiring credit(s) from an off-site forest mitigation bank; paying a fee in-lieu; and landscaping with an approved plan.

(B) Stream valley buffers. All unforested stream valley buffers on site must be afforested or reforested, except if the applicant demonstrates to the satisfaction of the Planning Board or Planning Director that [[afforestation or reforestation in the stream valley buffer]]:



(i) afforestation or reforestation in the stream valley buffer would be in conflict with allowable uses as established in the latest version of the environmental guidelines;

(ii) the stream valley buffer is located on park property stewarded by the Department of Parks, and the afforestation or reforestation would [[conflicts]] conflict with the mission and established stewardship practices of the Department of Parks; or

(iii) the stream valley buffer is not suitable to establish and retain required planting materials, [[then]] in which case a substitute environmental protective measure must be implemented.

All unforested stream valley buffers in a special protection area and stream valley buffers within the Patuxent Primary Management Area must be afforested as established in the latest version of the environmental guidelines.

[(B)](C) [[Governmental considerations]] *Governmental 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

579 advantage of opportunities to consolidate forest  
580 conservation efforts;

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

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

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

593 (2) ~~[[Off-site afforestation and reforestation]]~~ Off-site afforestation  
594 and reforestation. If no opportunities for planting forest exist  
595 ~~[[per]]~~ under Section 22A-12(e)(1)(A) ~~[[In addition to the use of~~  
596 ~~other sites proposed by an applicant and approved by the~~  
597 ~~County], off-site afforestation or reforestation may also include:~~

598 (A) ~~[[Forest]]~~ forest mitigation banks designated in advance  
599 by the County~~[[.]]~~;

600 (B) ~~[[Protection of existing off-site forest. Acquisition]]~~  
601 acquisition of an off-site protective easement for existing  
602 forested areas not currently protected in perpetuity ~~[[is an~~  
603 ~~acceptable mitigation technique instead of off-site~~  
604 ~~afforestation or reforestation planting, but]],~~ if the forest

cover protected ~~[[must be]]~~ is 2 times the afforestation and reforestation requirements~~[[.]]; or~~

(C) ~~[[For]]~~ for sites located in existing population centers, use of street trees which meet landscape or streetscape goals identified in an applicable master plan.

(3) ~~[[Priority areas and plantings]]~~ 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.

(4) ~~[[Location requirements]]~~ Location requirements.

(A) ~~[[Required]]~~ Except as permitted under subparagraphs (B) and (C) of this paragraph, required reforestation or afforestation must occur in both the county and the 8-digit watershed in which the project is located~~[[, except that if it]]~~.

(B) If the required reforestation or afforestation cannot be reasonably accomplished in the same county and 8-digit watershed in which the project is located, then the reforestation or afforestation [may] must occur in a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA) in the same county in which the project is located~~[[, except that if it]]~~.

(C) If the required reforestation or afforestation cannot be reasonably accomplished in a priority 8-digit watershed,

special protection area, or the Patuxent Primary Management Area (PMA) in the same county 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.

- (5) [[Deadline for plant installation]] *Deadline for plant installation.*  
The afforestation and reforestation requirements under this subsection must be accomplished within [[one]] 1 year or [2] [[two]] 2 growing seasons after a development project is complete.

\* \* \*

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

\* \* \*

- (3) 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 and must meet the balance of the remaining requirement through any [in] combination [with] of on-site or off-site reforestation [and] or afforestation[, not including landscaping].

\* \* \*

- (g) *In lieu fee.* A person contributing money to the forest conservation fund as an in lieu fee must do so at a rate specified by law or Council resolution, but not less than the rate required under Section 5-1610, as amended, of the Natural Resources Article of the Maryland Code. Any

in lieu fee payment must be made before any land disturbing activity, as defined in Section 22A-3, occurs on a section of the tract subject to the forest conservation plan. A person may make an in lieu fee payment to the forest conservation fund only if the person satisfactorily demonstrates that:

- (1) (A) the requirements for reforestation or afforestation on-site or off-site cannot reasonably be accomplished;
- (B) appropriate credits generated by a forest mitigation bank in the same watershed within the County are not available; [[and]]
- (C) if appropriate credits generated by a forest mitigation bank in the same 8-digit watershed within the County are not available, appropriate credits generated by a forest mitigation bank in a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA) are not available; and
- [[C)](D) if appropriate credits generated by a forest mitigation bank in the same 8-digit watershed, a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA) within the County are not available, appropriate credits generated by a forest mitigation bank in the County are not available; or

\* \* \*

(h) *Agreements.*

- (1) [[Maintenance agreement]] Maintenance agreement. A forest conservation plan must include a 5-year binding agreement for

maintenance of all planted forest conservation areas, including  
areas of afforestation, reforestation, as well as any required  
mitigation plantings. A forest conservation plan may require a 5-  
year binding agreement for maintenance of existing forest to be  
retained to ensure long-term health of forest stands. For park  
property with an approved mission and established stewardship  
practices including conservation and forest management plans, a  
maintenance agreement for existing forest is not required. A  
 person subject to the binding agreement may request that the  
 binding agreement be reduced to 3 years if the forest conservation  
 inspector finds that the agreement has been fulfilled, unless the  
 forest conservation plan is within a special protection area. If the  
 forest conservation plan is within a special protection area, the  
 binding maintenance agreement must be for a minimum of 5 years  
 and may not be reduced. The binding maintenance agreement may  
 include watering (as practical), feeding, non-native invasive plant  
 control, and replanting of areas to be afforested or reforested. A  
 maintenance agreement may also be required for non-native  
 invasive plant control of forest edge or ~~[[to]]~~ for control of non-  
native invasive species in adjacent areas that may impact forest  
conservation. The binding agreement for maintenance starts upon  
 satisfactory inspection of the plantings or maintenance required  
 under the forest conservation plan. A staged project may have  
 more than one agreement.

\* \* \*

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

\* \* \*

(e) The forest mitigation bank plan must include:

- (1) a maintenance agreement which meets the standards in subsection 22A-12(h)(1);
- (2) all information required by subsection 22A-10(c) for a forest conservation plan; ~~[[and]]~~
- (3) draft easements, covenants, or deed restrictions for the area included in the forest mitigation bank; and
- (4) the number of forest mitigation bank credits available for sale as ~~[either existing forest credits or]~~ either:
  - (A) if permitted by state law, existing forest credits, where 1 acre of forest mitigation bank credit equals 2 acres of existing forest; or
  - (B) planted forest credits, where 1 acre of forest mitigation bank credit equals 1 acre of planted forest[, or 2 acres of existing forest].

\* \* \*

(g) *Purchasing and selling forest mitigation bank credits.*

\* \* \*

- (3) Forest mitigation bank credits must be acquired from a forest mitigation bank within the same 8-digit watershed, as delineated by the State of Maryland, ~~[[as]]~~ where the development activity is located. If forest mitigation bank credits are not available within the same 8-digit watershed within the County, applicants ~~[may]~~ must acquire forest mitigation bank credits from a forest mitigation bank within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area

(PMA). If forest mitigation bank credits are not available within a priority 8-digit watershed, special protection area, or the Patuxent Primary Management Area (PMA), applicants may acquire forest mitigation bank credits from any approved forest mitigation bank within the County.

\* \* \*

## **22A-21. Variance.**

\* \* \*

(e) If the applicant is granted a variance to remove any of the subject trees listed as priority for retention in Section 22A-12(b)(3), the applicant must replant mitigation trees at a minimum ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed, measured at 4.5 feet above the ground, regardless of whether those trees are within or outside of forest area, in addition to any reforestation, afforestation, or landscape credit requirements. Mitigation for trees that are part of an historic site or associated with an historic structure is only required for the removal of trees located outside of forest.

(f) If the applicant is granted a variance in connection with disturbance of forest in a floodplain or stream buffer under Section 22A-12(b)(3)(D), the applicant must reforest at a minimum ratio of:

(1) 2:1, if the reforestation is occurring within the same 8-digit watershed as the project or a priority 8-digit watershed under Section 22A-12(c); or

(2) 2 ½:1, if the reforestation is occurring within the County outside of the same 8-digit watershed and outside of a priority 8-digit watershed under Section 22A-12(c).



762 [(e)] [(f)] (g) [Approval procedures; Conditions] Approval procedures;  
 763 [[Conditions]] conditions. The Planning Board must find that the  
 764 applicant has met all requirements of this Section before granting a  
 765 variance. However, the Planning Director may grant a variance if the  
 766 Director is authorized to approve the forest conservation plan and the  
 767 applicant meets all requirements of this Section. The Board or Director  
 768 may impose appropriate conditions to promote the objectives of this  
 769 Chapter and protect the public interest.

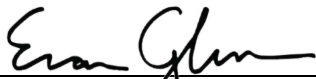
770 [(f)] [(g)] (h) [Notice to State Department of Natural Resources; Right  
 771 to initiate or intervene in proceedings] Notice to State Department of  
 772 Natural Resources; [[Right]] right to initiate or intervene in  
 773 proceedings.

774 \* \* \*

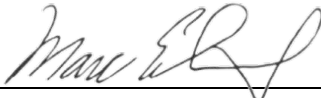
775 **Sec. 2. Expedited Effective Date.** This Act is necessary for the immediate  
 776 protection of the public health, safety, or interest and must take effect on the day that  
 777 it becomes law.

778 **Sec. 3. Transition.** Any amendment to Chapter 22A under Section 1 of this Act  
 779 does not apply to: (a) a preliminary or final forest conservation plan submitted before  
 780 this Act took effect; or (b) a County highway project if, prior to the effective date of  
 781 this Act, funding has been appropriated for the project, and the project has been  
 782 submitted to the Planning Board under mandatory referral.

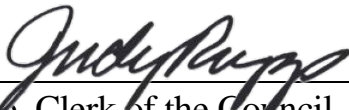
*Approved:*

	3/24/2023
_____ Evan Glass, President County Council	_____ Date

*Approved:*

	4/3/2023
_____ Marc Elrich, County Executive	_____ Date

*This is a correct copy of Council action.*

	4/3/2023
_____ Judy Rupp, Clerk of the Council	_____ Date

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

<p>Montgomery Planning Board Regulation on</p> <p>FOREST CONSERVATION – TREES</p> <p>Issued by: Montgomery County Planning Board Regulation No. COMCOR No. 22A.00.01</p> <p>Authority: Montgomery County Code, Chapter 22A-26 Council Review: Method (2) under Code Section 2A-15</p> <p>Effective Date: XXXXXX Comment Deadline: XXXXXXXX</p> <p>Summary: These regulations contain administrative requirements related to the review and processing of Natural Resource Inventories, Forest Stand Delineations, Exemptions from Submitting a Forest Conservation Plan, and Forest Conservation Plans that are acted upon by the Planning Board or the Planning Director under Chapter 22A.</p> <p>Staff Contact: Kristin Taddei, Planner III Intake and Regulatory Coordination Division Kristin.Taddei@montgomeryplanning.org</p> <p>Address: 2425 Reedie Drive Wheaton, MD 20902</p> <p>Background: These regulations clarify and further develop administrative procedures to implement the submittal of applications under Chapter 22A of the County Code. This regulation amends the Forest Conservation Regulations that were adopted by the Planning Board in 2001 and amended in 2021, and approved by the County Council under Method 2 procedures.</p>
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<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

## CHAPTER 22A. FOREST CONSERVATION – TREES REGULATIONS

### 22A.00.01.01 Purpose

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

### 22A.00.01.02 Authority

In accordance with Chapter 22A, sometimes referred to in these regulations as the “Forest Conservation Law,” the following Planning Board Regulations shall pertain to all development applications, mandatory referrals, conditional uses, sediment control permits, or park development applications.[.] In addition, the *Trees Technical Manual* is a guidance document, adopted by the Planning Board, which provides further clarification of the requirements of Chapter 22A of the Montgomery County Code and these regulations.

### 22A.00.01.03 Definitions

- 1) “Afforestation” means the creation, on a tract that is not presently in forest cover, of a biological community dominated by trees and other woody plant (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 trees per acre, with at least 50 of those trees having the potential of growing to a 2 inch or greater diameter at 4.5 feet above the ground within 7 years. In some instances, afforestation includes creation of tree cover by landscaping areas under an approved landscaping plan.
- 2) “Afforestation threshold” means the afforestation required for a site per Sections 22A-12(a), (d), and (f) of the Forest Conservation Law.
- 3) “Applicant” means the person who is applying for a development plan, diagrammatic plan, subdivision, floating zone plan, sketch plan, site plan, [sediment control permit, ]project plan, biohealth priority campus plan, preliminary plan of subdivision, administrative subdivision, minor subdivision, sediment control permit, special exception/conditional use, mandatory referral, or [P]park development plan.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- 4) “Break-even point” means an exact level of forest retention that precludes the need for reforestation.
- [5] “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
- 6) “Category II Conservation Easement” means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.]
- [7)] 5 “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- [8)] 6 “Conservation easement” means a restriction on the land and the natural features on this land. This easement must be shown on the record plat, if applicable, and its terms and conditions are recorded in the county’s land records. If no plat is required, the easement is recorded in the County’s land records only.
- (a) “Category I Conservation Easement” means a restriction on the land to permanently protect existing forest, planted forest, or forested or unforested environmental buffers.
- (b) “Category II Conservation Easement” means a restriction on the land that permanently protects large trees, landscape areas, and any tree planted outside of forest that receives forest conservation plan credit.
- [9)] 7 “Conservation threshold” means a specific percentage of a tract [which]that is used in determining reforestation requirements per Sections 22A-12(a) and (f) of the Forest Conservation Law.
- [10)] 8 “Critical habitat area” means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area:
- (a) is likely to contribute to the long-term survival of the species;
  - (b) is likely to be occupied by the species for the foreseeable future; and
  - (c) constitutes habitat of the species which is considered critical under the Annotated Code of Maryland Natural Resources Article.
- [11)] 9 “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under the Annotated Code of Maryland Natural Resources Article .

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- [12]] 10 “Critical root zone” means the zone in which the roots of a tree are located, as defined in the latest version of the Trees Technical Manual. It is also the area around a tree [which]that should be undisturbed unless protection measures are provided to protect the long-term viability of the tree.
- [13]] 11 “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for approval of a regulated activity.
- [14]] 12 “Declaration of intent” means a signed and notarized statement by a landowner that the cutting of trees on the landowner’s property:
- (a) is for purposes exempted under Chapter 22A of the Montgomery County Code; and
  - (b) will not circumvent the requirements of the Chapter.
- [15]] 13 “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.
- [16]] 14 “Development project” means grading or construction activities occurring on a specific tract. This includes redevelopment projects.
- [17]] 15 “Environmental buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of [*Environmental Guidelines: Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]the environmental guidelines, or an appropriate master plan; and floodplains.
- 16) “Environmental guidelines” means the *Guidelines for the Environmental Management of Development in Montgomery County, Maryland (M-NCPPC)*, as amended.
- [18]] 17 “Ephemeral channel/stream” means a channel defined as ephemeral per the latest version of the [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]environmental guidelines.
- [19]] 18 “Extenuating circumstances” means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.
- 19) “Equity focus areas” means geographic areas of Montgomery County characterized by high concentrations of lower-income households, people of color, and individuals who may speak English less than very well. Boundaries are determined by Planning Department staff and are mapped on the Planning Department website.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- 20) “Field survey” means a field investigation of the environmental characteristics of a site, including existing forest.
- 21) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year. Unless otherwise stated, this calculation is based on the contributing watershed under existing zoning
- [23]] 22) “Floodplain, One Hundred-Year” means the area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or 100-year flood, based on ultimate development of the watershed under existing zoning.
- 23) “Forest clearing” means the cutting or destruction of any trees or understory which are part of an existing forest even if the resulting community continues to meet the definition of forest, except if it is done as part of an approved management plan or timber harvest permit. Forest loss will be based on a measure of the aerial extent of forest cover which includes the outer perimeter of individual trees.
- 24) “Forest conservation plan” means a plan which outlines the strategies and specific plan proposed for retaining, protecting, and reforesting or afforesting areas on a site.
- 25) “Forest conservation worksheet” means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- 26) “Forest management plan” means a plan establishing conservation and management practices for a landowner after assessment of the resource values of forested properties. This plan is approved by the MD Department of Natural Resources forester assigned to the county after coordination with the county, and by the Planning Director if located within a conservation easement.
- 27) “Forest mitigation bank plan” means a plan that a property owner submits to document the acreage of forest mitigation bank credits and shows the credits based on the amount of existing forest permanently protected, forest planted and protected, and a planting plan.
- 28) “Forest mitigation bank credits” means the credits available for sale at a forest mitigation bank, where 1 acre of mitigation bank credit equals 2 acres of existing forest or 1 acre of planted forest.
- 29) “Forest retention” means the forest shown on a forest conservation plan that will be saved, counted as forest retained on the worksheet, and included in a long-term protective agreement.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- 30) “Forest stand delineation” or “FSD” means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity. The FSD is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).
- 31) “Growing season” means a period of consecutive frost-free days as stated in the current soil survey for the county. In an average year, a period commencing on April 1<sup>st</sup> and ending on October 31<sup>st</sup>.
- 32) “Intermittent stream” means a stream defined as intermittent in the latest version of the *[Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]* environmental guidelines.
- 33) “Landscaping credit” means areas shown on a forest conservation plan, that are not forest, but will [be] receive credit toward a site’s reforestation or afforestation requirements, so long as the plantings are not required to meet zoning or other requirements. The forest conservation plan must show the dimensions and details for tree planting and landscaping areas. Any planting for landscaping credit to meet the forest conservation plan requirements must use native plants or cultivars of native plants.
- 34) “Limits of disturbance” means a clearly designated area within which land disturbance may occur.
- 35) “Maintenance and management agreement” means the short-term management agreement associated with a forest conservation plan, and may include the control of non-native and invasive plants.
- 36) “Major amendment to a Forest Conservation Plan” means an amendment that results in more than a total of 5,000 square feet of additional forest clearing and/or the removal or partial removal of any conservation easement.
- 37) “Minor amendment to a Forest Conservation Plan” means an amendment that does not result in more than a total of 5,000 square feet of additional forest clearing or the removal or partial removal of any conservation easement.
- 38) “Native” means a plant or animal species whose geographic range during precolonial time included the Piedmont Region of Maryland. Information on native plants can be found in *Woody Plant of Maryland* (Brown and Brown, 1972) and *Herbaceous Plants of Maryland* (Brown and Brown, 1984), as well as other literature sources.
- 39) “Natural regeneration” means the natural establishment of native trees and other native vegetation.
- 40) “Natural resources inventory” or “NRI” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

latest version of [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) and the *Tree Technical Manual* (MNCPPC)]the environmental guidelines. The NRI is submitted as part of the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD).

- 41) “Offsite” means outside the limits of the areas encompassed by a tract.
- 42) “Onsite” means within the limits of an area encompassed by a tract.
- 43) “Perennial stream” means a stream defined as perennial in the latest version of [*Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC)]the environmental guidelines.
- 44) “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.
- 45) “Priority planting area” means areas in which planting must occur when present[unless those areas are not present].
- 46) “Priority retention area” means areas, identified in Section 22A-12(b) of the Forest Conservation Law that are ranked as the highest priority for retention as part of a forest conservation plan.
- 47) “Qualified professional” means a Maryland licensed forester, Maryland licensed landscape architect, or other qualified professional approved by the State.
- 48) “Regulated activity” means any of the following activities:
- (a) Subdivision;
  - (b) Biohealth priority campus plan;
  - [(b)] (c) Site plan;
  - [(c)] (d) Project plan;
  - [(d)] (e) Sketch plan;
  - (f) Floating zone plan;
  - (g) Development plan;
  - [(e)] (h) Special exception/conditional use on a tract of land greater than 40,000 square feet;
  - [(f)] (i) Clearing of more than 5,000 square feet of forest;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[(g)] (j) Park [D]development project on a tract of land greater than 40,000 square feet;

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

[(i)] (j) Mandatory referral on a tract of land greater than 40,000 square feet.

- 49) “Retention area” means forested areas, tree stands and the critical root zone of individual trees that will be retained on a site.
- 50) “Selective clearing” means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.
- 51) “Specimen tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.
- 52) “Stream buffer” means a strip of land contiguous with and parallel to the bank of a perennial or intermittent stream, the width of which must be determined according to the latest version of *[Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]the environmental guidelines.*
- 53) “Subdivision” means the definition of subdivision in Chapter 50 of the Montgomery County Code.
- 54) “Tract” means:
- (a) The property, or adjacent properties, subject to a development application, the boundaries of which are described by deed or record plat; or
  - (b) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.
- 55) “Tree save area” means an area designating trees, or stands of trees, outside existing forest cover which are to be retained.
- 56) “Tree save plan” means a plan approved by the Planning Board, or Planning Director, under Chapter 22A or Chapter 50 of County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.
- 57) “Tree stand” means an area where trees are concentrated at too low a density, or that is too small in size or area to meet the definition of “forest.”

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

#### 22A.00.01.05 Application

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

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

versions of [Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]the environmental guidelines and the *Trees Technical Manual* (MNCPPC). To be reviewed and approved by the Planning Director.

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

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

### **Requirements**

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

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

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

*Development in Montgomery County, Maryland (MNCPPC)]environmental guidelines or appropriate master plan;*

- (6) Existing one-hundred year floodplains and associated 25' building restriction lines;
- (7) wetlands and their buffers per the latest version of the [*Guidelines for Environmental Management of Development in Montgomery County, Maryland (MNCPPC)]environmental guidelines;*
- (8) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, erodible soils per the list in Appendix C of the [*Guidelines for Environmental Management in Montgomery County, Maryland (MNCPPC)]environmental guidelines, and known serpentinite soils in Montgomery County;*
- (9) rare, threatened or endangered plants or animals observed in the field;
- (10) critical habitat areas observed or documented by the Maryland Department of Natural Resources;
- [(10)] (11) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- [(11)] (12) champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species;
- [(12)] (13) Specimen Trees;
- [(13)] (14) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees;
- [(14)] (15) cultural features and historic sites;
- [(15)] (16) a site vicinity map at 1" =2000' which shows the location of the site within a square mile and indicates major roads; [and]
- [(16)] (17) a table containing acreage of wetland, 100-year floodplains, stream buffers, and environmental buffers[.]; and
- [(17)] (18) A completed NRI/FSD application form, fee schedule worksheet, and review fee.

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

**PLANNING BOARD DRAFT MAY 2022**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (1) forest stands and field verified boundaries;
  - (2) a description of each stand including:
    - (a) acreage;
    - (b) dominant and codominant tree species;
    - (c) size class by species;
    - (d) percent canopy closure;
    - (e) number of canopy layers (vertical structure);
    - (f) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species;
    - (g) a stand condition narrative for each stand including, priority for retention, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and specimen trees by size and species; champion trees and trees that have a diameter at 4.5 feet above the ground (DBH) that is 75% or more of the diameter of the current state champion for that species, which must also be clearly numbered with corresponding tags in the field;
  - (4) a table that identifies individual trees that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species and the health of those trees, which must also be clearly numbered with corresponding tags in the field;
  - (5) field survey reference points demarked on a plan drawing and in the field;
  - (6) a table containing total acreage of forest, forest in priority retention areas, forest not in priority retention areas, forest within existing wetlands, forest within 100-year floodplains, and forest within stream buffers;
  - (7) a summary map, which in addition to the information in subsections (1) and (2), shows the priority of forest stands for retention as described in Section 22A.00.01.07; and
  - (8) A completed NRI/FSD application form, fee schedule worksheet and review fee.
- C. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must also include:
- (1) forest stands as determined by dominant species types and priority for retention;
  - (2) stand condition narrative as described in subsection B(2);
- D. When necessary the items described in A and B, or A and C, above must be combined into one plan drawing and is called a Natural Resources Inventory/Forest Stand Delineation.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

E. The Natural Resources Inventory and Forest Stand Delineation must be prepared by a licensed forester, licensed landscape architect or other qualified professional; and must exhibit a stamp or certification of the preparer. The Natural Resources Inventory/Forest Stand Delineation must be used to determine areas of forest to be saved or planted.

F. A Natural Resources Inventory and Forest Stand Delineation is valid for two years from the date it is approved. If a forest conservation plan or a plan under Section 22A-9 has not been accepted as complete during the two-year validity period, an approved Natural Resources Inventory and Forest Stand Delineation expires at the end of its validity period. An expired Natural Resources Inventory and Forest Stand Delineation may be recertified within one year after the expiration date, if the original plan preparer attests that there are no changes to the size and shape of the application tract, existing conditions, forest acreage, tree canopy, or any other detail of the originally approved Natural Resources Inventory and Forest Stand Delineation. A Natural Resources Inventory and Forest Stand Delineation may only be recertified one time. A new Natural Resources Inventory and Forest Stand Delineation may be required if there are changes to site conditions, applications, plan preparer, or applicant.

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

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

- (1) trees, shrubs and other plants located in sensitive areas including environmental buffers, slopes over 25 percent (not man-made), erodible soils on slopes of 15% or more, and critical habitats;
- (2) a contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- (3) trees, shrubs, or plants identified on the Maryland Department of Natural Resources list of rare, threatened, and endangered species;
- (4) a forest area which has been designated as priority for retention in master plans or functional plans, or in the absence of such plans, a forest which exhibits all of the following characteristics as further described in the most recent version of the *Trees Technical Manual*:
  - (a) high structural and species diversity;
  - (b) few alien or invasive species present;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

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

- A. In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The F[f]orest C[c]onservation L[l]aw specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants [should]must strive to maximize forest retention whenever practical.
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate, to the satisfaction of the Planning Board or Planning Director, as applicable:
  - (1) How techniques for retention have been exhausted;
  - (2) Why the forests in priority retention areas specified in Section 22A.00.01.07 are not being retained;



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (3) If forests in priority retention areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12e(1)(A) of the Forest Conservation Law;
- (4) Where on site in priority planting areas the afforestation or reforestation will occur in compliance with subsection 22A-12(e)(3) of the Forest Conservation Law; and
- (5) How the standards for afforestation and reforestation requirements in subsection 22A-12(e)(4) of the Forest Conservation Law will be met.

C. Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subjected to the reforestation requirements of both the nontidal wetlands regulations and this subtitle, subject to the following:

- (1) Forested nontidal wetlands which are retained, must be counted toward the forest conservation requirements of this subtitle;
- (2) Forested wetlands which are permitted to be cleared must be replaced as required under the provisions of Environment Article, Title 9, Annotated Code of Maryland;
- (3) Clearing within forested wetlands must be shown on the forest conservation plan; and
- (4) Wetlands are priority retention areas.

D. Retention Areas.

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

E. Afforestation and Reforestation.

- (1) Afforestation and reforestation areas must be at least 10,000 square feet in size and 50 feet wide, or be adjacent to an existing forest area (either on-site or off-site) which is protected.
- (2) The following must be considered as highest priority planting areas for forest conservation plans with required afforestation and reforestation:
  - (a) environmental buffers; [;]

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

Size	Number Required (per acre) (1)	Approximate Spacing (feet on center) (2)	Survival Requirements (starting at the end of the [2 <sup>nd</sup> ] 3 <sup>rd</sup> or 5 <sup>th</sup> growing season) (3)
<b>TREES</b>			
¾" to 1" caliper; B&B or container grown (minimum [5] 7 gal.)	200	12' to 15'	75% or 150 per acre(4)
1 ½" to 2" caliper; B&B or container grown	100	15' to 20'	100% or 100 per acre(5)

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

(minimum 15 gal.)			
<b>SHRUBS</b>			
18" to 24" height; container grown (minimum 3 gal.)	33	(6)	

**Notes:**

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

**F. Tree Save Plans.**

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

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

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

- (1) The Planning Board or Planning Director, as applicable, must find that all opportunities for establishing forest have been incorporated into on-site afforestation and reforestation plans before any credit for landscaping or tree save area is applied.
- (2) Trees receiving credit towards forest conservation requirements must not also be credited towards landscaping requirements, including planting and screening required by zoning or other regulatory requirements.
- (3) Newly planted landscape trees, within landscape areas must be 3" minimum caliper stock to be counted toward requirements.

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

(5) The area(s) where trees are planted must have adequate soil conditions, volume, and surface area to sustain plantings;

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

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

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

(7) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements only for projects located within an equity focus area as follows:

**PLANNING BOARD DRAFT MAY 2022**

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (b) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may receive full credit for their area;
  - (c) landscaping areas and retained tree stands which are less than 2,500 square feet in size or 35 feet wide may receive one quarter credit for their area;
  - (d) individual landscape trees may receive one quarter credit for the projected area of their canopy at 20 years;
  - (e) individual non-priority trees which are retained may receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
  - (f) the total credit from these areas must not exceed twenty percent of the overall reforestation requirement for a site.
- (8) Landscaping, retention of tree stand, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:
- (g) sites with tree cover requirements per subsection (3):
    - (i) landscaping areas or retained tree stands of any size may receive full credit for their area; and
    - (ii) individual landscape trees which are retained may receive full credit for the protected area of canopy at 20-years; [and]
    - [(iii) individual trees, or tree stands, which are retained may receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is permanently protected by an easement;]
  - (h) sites with special provisions for meeting minimum afforestation[forest cover] requirements per Section 22A-12(f) of the Forest Conservation Law:
    - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide may receive full credit for their area;
    - (ii) landscaping areas or retained tree stands which are at least 2,500 square feet in size or less than 35 feet wide may receive one quarter credit for their area;
    - (iii) individual non-priority landscape trees may receive one quarter credit for the projected area of their canopy at 20-years;
    - (iv) individual trees which are retained may receive one quarter credit for the protected area of their critical root zone when at least two third of the entire critical root zone is protected; and
    - (v) the total credit from these areas must not exceed twenty percent of the overall afforestation requirement for a site.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

## 22A.00.01.09 Forest Conservation Plan Requirements

### A. Preliminary Forest Conservation Plans.

- (1) Development applications that need more than one approval must submit a preliminary forest conservation plan in conjunction with the first approval, unless multiple applications are submitted for simultaneous review and only a final forest conservation plan is required. The preliminary forest conservation plan may be based on conceptual analysis if the basic parameters are met and any assumptions are realistic.
- (2) A preliminary forest conservation plan must contain the following:
  - (a) the shape and dimension of lots, showing locations of any existing structures and improvements, including paved areas;
  - (b) locations and dimension of all existing and proposed rights-of-way, setback, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as parts of the development application must be identified);
  - (c) location of building restriction lines and areas to be conserved including environmental buffers;
  - (d) conceptual locations of proposed structures and improvements, drainage systems, and sediment control measures;
  - (e) preliminary limits of disturbance of the natural terrain, and location of forest and tree retention areas, including acreage, with appropriate justification and proposed long-term protection methods (a conceptual grading plan and/or a more detailed tree survey may be required to determine the feasibility of proposed retention areas);
  - (f) proposed locations of afforestation and reforestation areas, including acreage, and mitigation trees, if required;
  - (g) a table containing the following information:
    - (i) acreage of tract;
    - (ii) acreage of the tract remaining part of an agricultural use;
    - (iii) acreage of road and utility rights-of-way which will not be improved as part of the development application;
    - (iv) acreage of total existing forest;
    - (v) acreage of forest in priority retention areas;
    - (vi) acreage of forest not in priority retention areas;
    - (vii) acreage of total forest retention in priority retention areas;
    - (viii) acreage of total forest retention not in priority retention areas;
    - (ix) acreage of total forest cleared in priority retention areas;
    - (x) acreage of forest cleared not in priority retention areas;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (xi) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;
- (xii) acreage of forest retained, cleared, and planted within wetlands;
- (xiii) acreage of forest retained, cleared, and planted within 100-year floodplains;
- (xiv) acreage of forest retained, cleared, and planted within stream buffers;
- (xv) total acreage of forest retained, cleared, and planted within priority planting areas; and
- (xvi) linear feet average width of stream buffer provided; and
- (h) a forest conservation worksheet showing calculation of forest conservation requirements.

**B. Final Forest Conservation Plans**

- (1) A final forest conservation plan must be based on final site grading, if known, and must be submitted in conjunction with the final approval needed as part of a development application. However, if the development project requires the approval of one development application, the final forest conservation plan must be submitted with that development application [and in conjunction with the preliminary forest conservation plan].
- (2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h) a final forest conservation plan must include:
  - (a) conceptual or final grading plans which include building locations and footprint, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;
  - (b) a limits of disturbance line which reflects the limits of all clearing and grading on the tract, and the proposed location of sediment and erosion control devices and staging areas;
  - (c) a survey of trees with a diameter of 24 inches and greater at 4.5 feet above the ground (or trees of other sizes if requested by Planning Department staff to determine the feasibility of proposed retention areas) , within 50' on either side of the limits of disturbance, with critical root zones delineated, and with the distance from the tree face to the limits of disturbance shown on the plan or in an associated table.
  - (d) retention areas including forest, tree stands and other individual trees to be saved including acreage;
  - (e) a note describing whether on site downed woody material is to be retained and incorporated into retention, afforestation, or reforestation areas to build habitat.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

[(e)] (f) an afforestation and/or reforestation planting plan, if required, which contains:

(i) a note indicating whether soil restoration techniques will be implemented;

[(i)] (ii) location and acreage of areas to be planted;

[(ii)] (iii) an analysis of the suitability of the site for planting and a description of necessary methods;

[(iii)] (iv) a list of target tree and shrub species, chosen based on analysis of site conditions which can be used for site planting;

[(iv)] (v) a plant materials table including size of plants to be installed and quantities;

[(v)] (vi) planting and inspection schedule which is tied to the construction sequence for the project;

[(vi)] (vii) a maintenance plan which includes provision for necessary watering, control of competing vegetation, protection from disease, pest, and mechanical injury, removal of protective measures such as deer caging, and reinforcement planting if plant survival falls below the requirements of subsection 22A.00.01.08E(3)(c);; and

[(vii)] (viii) a maintenance and management agreement; and

(d) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;

(e) a protection plan which shows:

(i) location of temporary protection devices which must be installed if clearing, grading, or construction occurs within 50 feet of a retention area boundary;

(ii) stockpile areas and borrow pits;

(iii) specifications and details for the protection device;

(iv) a narrative of stress reduction or other measures which are needed for specific trees;

(v) a field inspection schedule pursuant to Section 22A.00.01.10;

(vi) location of permanent protection devices; an arborist report that shows the methods to be utilized to protect any tree, 24" dbh and greater, when 30% or more of the critical root zone is impacted; and

(vii) An arborist report may be required, on a case-by-case basis, for trees less than 24" dbh, when 30% or more of the critical root zone is impacted.



<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (f) identification of how the off-site planting requirements will be met either by making a fee in lieu payment, by acquiring mitigation credits from an approved forest mitigation bank, or by planting offsite;
- (g) If off-site planting is going to occur, the forest conservation plan must include the items listed in subsection (e) plus a map of the proposed planting site showing location, soils, and environmental features which are priority planting areas as stated in subsection 22A.00.01.08E(2).

**C. Noticing Requirements for Forest Conservation Plans.**

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

**22A.00.01.10 Inspections**

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

- (1) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins (the purpose of the meeting should be to field verify the limits of clearing specified on the approved plan, authorize necessary adjustments, and to authorize necessary stress reduction measures and installation of protection devices);
- (2) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins (the purpose of the meeting should be to field verify that both measures have been done correctly and to authorize clearing and grading);
- (3) after completion of all construction activities to determine the level of compliance with the approved plan;
- (4) before the start of any required reforestation planting (the purpose of the meeting should be to determine whether necessary pre-planting measures have been completed and authorize any necessary adjustments to the planting specification);
- (5) after required reforestation and afforestation planting has been completed to verify that the planting is acceptable and to begin the required maintenance and management period;
- (6) Two years after reforestation and afforestation have been completed, to determine survival and assess necessary maintenance activities for the remaining duration of the maintenance and management period; and
- (7) At the end of the maintenance and management period to determine the level of compliance with provisions of the planting plan and, if appropriate, authorize release of any financial security.

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- B. The applicant must:
- Request these inspections at the designated points.
  - Submit to the Planning Department semi-annual reports and photographs showing compliance with the provisions of the forest conservation plan by October 31<sup>st</sup> and April 30<sup>th</sup> of each year for the duration of the maintenance and management period.
- C. The Planning Department is authorized to conduct field inspections at any time other than those identified in Section 22A.00.01.10.A.
- D. For sites without any planting requirements the final inspection is for the Planning Department to authorize removal of any tree protection measure. For sites with planting requirements, the final inspection occurs at the end of the maintenance and management period.

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

- A. A request for exemption from forest conservation plan requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law must be in writing to the Planning Director.
- B. The following information must be provided as part of an exemption request:
- (1) An application form;
  - (2) A written request detailing how the exemption applies to the proposed plan;
  - (3) A Natural Resources Inventory, or Natural Resources Inventory/Forest Stand Delineation if forest is proposed to be removed, prepared per Section 22.00.01.06 and the environmental guidelines in the latest version of *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC);
  - (4) an original copy of a declaration of intent, if required, signed by the applicant named on the development or sediment control application; and
  - (5) other appropriate information which supports the exemption request including a copy of the proposed plan for development, if applicable.
- C. A waiver from the requirement to provide a Natural Resources Inventory with an exemption request may be granted for:
- (1) single lot exemptions per subsection 22A-5(a) of the Forest Conservation Law if information is submitted, and the Planning Director affirms, that a natural resource inventory is not necessary but the information does show existing and proposed topography and forest boundaries;
  - (2) agricultural exemptions per subsection 22A-5(b) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries;
  - (3) commercial logging and timber harvesting exemptions per subsection 22A-5(d) of the Forest Conservation law if a diagram is submitted with the exemption request showing existing and future forest boundaries, environmental buffers, harvest areas, and haul roads; and

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (4) applications for other exemptions, if the site being developed does not contain any forest, specimen or significant trees, existing conservation easements, or environmentally sensitive features, and a plan showing existing features and topography is submitted with the exemption request.
- D. The Planning Director may require a person requesting an exemption from submitting a forest conservation plan to submit a tree save plan in conjunction with the exemption request.
- E. The Planning Board, or Planning Director, may require a person failing to file an exemption request per section 22A-4 of the Forest Conservation Law, or found in noncompliance with an exemption or a declaration of intent to:
- (1) Submit a Forest Conservation Plan and meet the requirements in the Forest Conservation Law for a regulated activity;
  - (2) Pay a noncompliance fee;
  - (3) Be subject to other enforcement actions appropriate under Article III of the Forest Conservation Law; and/or
  - (4) Submit a request to be exempt from submitting a forest conservation plan.
- F. In its determination of appropriate enforcement action, the Planning Board may consider whether failure to file an exemption by a person required to file is a violation of this subtitle.
- G. A confirmed exemption that has not started any authorized land disturbance within 5 years from the date of confirmation automatically expires without notice.
- H. A confirmed exemption may not be amended. A new exemption must be submitted for review in order to make any changes.

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

- A. A declaration of intent is an affirmation by an applicant that a property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation Plan. A declaration of intent is required for the following exemptions from submitting a forest conservation plan;
- (1) An activity conducted on an existing single lot that is required to construct a dwelling house or accessory structure intended for the use of the owner, if the activity complies with subsection 22A-5(a) of the Forest Conservation Law;

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

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

- A. Forest Conservation Plan Amendments.
- (1) Minor amendments which do not result in more than a total of 5,000 square feet of additional forest clearing may be approved by the Planning Director on a case by case basis. These minor amendments may include field modifications and substituting one area of forest, for retention of another of equal or greater size and value.
  - (2) Major amendments which entails:

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> <b>MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902</b>	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

- (a) more than a total of 5,000 square feet of additional forest clearing must be approved by Planning Board or Planning Director (depending on who approved the original plan), or
- (b) Removal of any conservation easement must be approved by the Planning Board.

(3) All Forest Conservation Plan amendment applications must conform to the requirements of the Forest Conservation Law and regulations in effect at the time of submission.

[B. Exemptions from Submitting a Forest Conservation Plan

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

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

A. Maintenance Agreements.

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

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

**B. Bonding.**

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

<b>MONTGOMERY COUNTY</b> <b>PLANNING BOARD REGULATION</b> MNCPPC – 2425 Reedie Drive – Wheaton, Maryland 20902	
<b>Subject</b> Forest Conservation – Trees Regulations	<b>Number</b>
<b>Originating Department</b> Montgomery County Planning Department	<b>Effective Date</b>

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

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

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

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

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