

1 **Chapter 22A**

2 **FOREST CONSERVATION - TREES**

3 **Article I. General.**

4 **Sec. 22A-1. Short title.**

5
6 This Chapter may be referred to as the Montgomery County Forest Conservation Law. (1992
7 L.M.C., ch. 4, § 1)

8 **Sec. 22A-2. Findings and purpose.**

9
10
11 (a) *Findings.* The County Council finds that trees and forest cover constitute an important
12 natural resource. Forest filters groundwater, reduce surface runoff, help alleviate flooding, and
13 supply necessary habitat for wildlife. Trees cleanse the air, offset the heat island effects of urban
14 development, and reduce energy needs. They improve the quality of life in a community by
15 providing for recreation, compatibility between different land uses, and aesthetic appeal. The
16 Council finds that forest loss as a result of development and other land disturbing activities is a
17 serious problem in the County.

18
19 (b) *Purpose.* The purpose of this Chapter is to:

- 20
21
22 (1) save, maintain, and plant trees and forested areas for the benefit of County residents and
23 future generations;
24 (2) establish procedures, standards, and requirements to minimize forest loss as a result of
25 development and to protect trees and forests during and after construction or other land
26 disturbing activities;
27 (3) the primary objective of the forest conservation plan is to maximize forest retention;
28 (4) establish procedures, standards, and requirements for afforestation and reforestation of
29 land subject to an application for development approval or a sediment control permit;
30 (5) establish a fund for future forest conservation projects, including afforestation and
31 reforestation; and
32 (6) provide a focused and coordinated approach for County forest conservation activities.
33 (1992 L.M.C., ch. 4, § 1)

34
35 **Sec. 22A-3. Definitions.**

36
37 In this Chapter, the following terms have the meanings indicated:

38
39 *Afforestation* means the establishment of forest or tree cover in accordance with this Chapter on
40 an area from which it has always or very long been absent, or the planting of open areas which
41 are not in forest cover.

42
43 *Afforestation threshold* means a specific percentage of a tract which is used in determining the
44 afforestation requirements.

1 *Agricultural activity* means farming activities conducted as part of a recognized commercial
 2 enterprise, including: plowing, tillage, cropping, installation of best management practices,
 3 seeding, cultivating, and harvesting for production of food and fiber products (except
 4 commercial logging and timber harvesting operations), the grazing and raising of livestock,
 5 aquaculture, sod production, and the cultivation of orchard, nursery, and other products.
 6

7 *Agricultural and resource area* means an undeveloped area zoned for a density of less than or
 8 equal to one dwelling unit per 5 acres.
 9

10 *Applicant* means the person submitting a natural resource inventory/forest stand delineation,
 11 forest conservation plan, tree survey, or tree protection plan to the Planning Director.
 12

13 *Certified arborist* means a professional who possesses the technical competence gained through
 14 experience and related training, as per a professional organization, to provide for or supervise the
 15 management and protection of trees and other woody plants in residential, commercial, and
 16 public landscapes.
 17

18 *Champion tree* means the largest tree of its species in the County, as identified in the County
 19 Forest Conservancy District Board's Champion Tree Register.
 20

21 *Commercial and industrial uses* means manufacturing operations, office complexes, shopping
 22 centers, and other similar uses and their associated storage areas, yards, and parking areas.
 23

24 *Commercial logging or timber harvesting operation* means the cutting and removing of tree
 25 stems from a site for commercial purposes, leaving the root mass intact.
 26

27 *Declaration of intent* means a signed and notarized statement by a landowner that the cutting of
 28 trees on the landowner's property:

- 29 (1) is for purposes exempted under this Chapter;
- 30 (2) no activity requiring a forest conservation plan will occur on site within 5 years of the
 31 date of completion of the proposed activity; and
- 32 (3) will not circumvent the requirements of this Chapter.
 33

34 *Development plan* means a plan or an amendment to a plan approved under Division 59-D-1 of
 35 Chapter 59.
 36

37 *Development project completion* means the date or event identified in the forest conservation
 38 plan agreement, but no later than the date on which the first use-and-occupancy permit is issued
 39 for the development (or activity) subject to the preliminary plan of subdivision or sediment
 40 control permit or, if a use-and-occupancy permit is not required, the date on which the final
 41 building inspection or sediment control inspection (for activities not involving building) is
 42 conducted by the Department of Permitting Services. A staged development may have more than
 43 one completion date.
 44

45 *District Council* means the County Council in its capacity, under Article 28 of the Maryland
 46 Code, to act on planning the zoning matters for the Maryland-Washington Regional District.

1
2 *Environmental Buffer* means all wetlands, wetland buffers, all one-hundred year floodplains, and
3 all perennial and intermittent streams and stream buffers. May also include hydraulically
4 connected steep slopes and erodible soils.

5
6 *Equestrian Facility*: Any building, structure, or land area that is primarily used for the care,
7 breeding, boarding, rental, riding, sport eventing, or training of horses or ponies, the teaching of
8 equestrian skills, or competitive equestrian events.

9
10 *Floodplain (100-year)* means an area along or adjacent to a stream or body of water, except tidal
11 waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm
12 event, or a 100-year flood.

13
14 *Forest* means a biological community dominated by trees and other woody plants (including
15 plant communities, the understory, and forest floor) covering a land area which is 10,000 square
16 feet or greater and at least 50 feet wide. However, minor portions of a forest stand which
17 otherwise meet this definition may be less than 50 feet wide if they exhibit the same character
18 and composition as the overall stand. Forest includes:

- 19 (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees
20 having a 2 inch or greater diameter at 4.5 feet above the ground; and
21 (2) forest areas that have been cut but not cleared, and
22 (3) An area where at least one layer may not be present due to site conditions, pest
23 predation, human impacts, or non-native species.

24
25 Forest does not include an orchard.

26
27 *Forest conservation* means the retention of existing forest or the creation of new forest at the
28 levels set by the Planning Board or Planning Director.

29
30 *Forest conservation fund* means a special fund maintained by the County to be used for purposes
31 specified in Section 22A-16.

32
33 *Forest conservation plan* means a plan approved under Article II.

34
35 *Forest conservation threshold* means the percentage of the net tract area at which the
36 reforestation requirement changes from a ratio of ¼ acre planted for every one acre removed to a
37 ratio of 2 acres planted for every one acre removed.

38
39 *Forest cover* means the area of a site meeting the definition of forest.

40
41 *Forest mitigation banking* means the intentional preservation, restoration, or creation of forests
42 undertaken expressly to provide credits for afforestation or reforestation requirements.

43
44 *Forest stand delineation* means the collection and presentation of existing vegetation in relation
45 to the natural resources on a site proposed for development or land disturbing activities.

46

1 *Government Entity* means any federal, state, or local organization which in addition to have
2 governmental character has sufficient discretion to distinguish it as separate from the
3 administrative structure of any other governmental unit.
4

5 *High-density residential area* means an area zoned for densities greater than one dwelling unit
6 per 40,000 square feet, including both existing and planned development and their associated
7 infrastructure, such as roads, utilities, and water and sewer service.
8

9 *Hydraulically adjacent slopes* means slopes lying within 200 feet (from bank) of a
10 stream/drainage course, that drain directly to the stream/drainage course or its associated
11 floodplain. When a stream buffer encompasses the toe of a steep slope within the 200-foot
12 section, adjacency will apply to the entire slope even if the 200-foot cutoff is in the middle of the
13 slope.
14

15 *Improved property* means a property containing a single-family residence or any other structure
16 that was constructed and used in accordance with the zoning ordinance.
17

18 *Institutional development area* means land occupied by uses such as schools, colleges and
19 universities, military installations, transportation facilities, utility and sewer projects, government
20 offices and facilities, fire stations, golf courses, recreation areas, parks, and cemeteries. In this
21 Chapter, institutional development does not include a religious institution which is a permitted
22 use in any zone and would not require a special exception.
23

24 *Intermittent stream* means surface water, contained within a defined channel or bed, that flows at
25 least once per year. An intermittent stream includes one or more of the following characteristics:
26 (1) defined or distinct channel; (2) hydric soils or wetlands within and adjacent to the channel;
27 hydraulically sorted sediments; (4) removal of vegetative litter; or (5) loosely rooted vegetation
28 by the action of moving water.
29

30 *Land disturbing activities* has the same meaning as in Chapter 19.
31

32 *Leaf litter* means fallen organic matter, including but not limited to recognizable and/or partially
33 decomposed leaves, needles, branches, bark and stems that accumulate on the forest floor.
34

35 *Linear project* means a project whose configuration is elongated with nearly parallel sides and
36 used to transport a utility product or public service not otherwise to be constructed or improved
37 as part of an application for subdivision approval, such as electricity, gas, water, sewer,
38 communications, trains, pedestrians, and vehicles. A linear project may traverse fee simple
39 properties through defined boundaries or through easement rights.
40

41 *Lot* means a single unit of land created by deed or subdivision.
42

43 *Mandatory referral* means the required review by the Planning Board of projects or activities to
44 be undertaken by governmental agencies and private and public utilities under Section 7-112 of
45 Article 28 of the Maryland Code.
46

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

5
6 *Mixed-use development* means a single, relatively high-density development project, usually
7 commercial in nature, which includes 2 or more types of uses.

8
9 *Municipal corporation* means a municipality without planning and zoning authority or which has
10 assigned its responsibilities under Subtitle 16 of the Natural Resources Article of the Maryland
11 Code to the County.

12
13 *Natural regeneration* means the natural establishment of trees and other vegetation with at least
14 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20
15 feet at maturity.

16
17 *Natural Resource Inventory* means the collection and presentation of environmental information
18 for a property and the surrounding area.

19
20 *Net tract area* means the total area of a tract, including both forested and unforested areas, to the
21 nearest 1/10 acre, reduced by road or utility rights-of-way which are unrelated to and will not be
22 improved as part of the development application. However, in agriculture and resource areas,
23 net tract area is the portion of the total tract for which land use will be changed or will no longer
24 be used for primarily agricultural activities. For a linear project, net tract area is the area of a
25 right-of-way width or the limits of disturbance as shown on the development application,
26 whichever is greater.

27
28 *Nontidal wetland* means an area regulated as a nontidal wetland under Title 8, Subtitle 12, of the
29 Natural Resources Article of the Maryland Code.

30
31 *Obligee* means a person obligated under a financial security instrument to meet certain
32 regulatory requirements under Article II.

33
34 *Perennial stream* means a stream that has base flow all year.

35
36 *Person* means:

- 37 (1) the federal government, the state, any county, municipal corporation, or other political
38 subdivision of the state, or any of their units;
- 39 (2) an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or
40 representative of any kind; or
- 41 (3) any partnership, firm, common ownership community or other homeowners'
42 association, public or private corporation or any of their affiliates or subsidiaries.

43
44 *Planned unit development* means a development comprised of a combination of land uses or
45 varying intensities of the same land use, having at least 20 percent of the land permanently
46 dedicated to open space, and in accordance with an integrated plan that provides flexibility in

1 land use design approved by the District Council under Division 59-D-1 or by the Planning
2 Board under Division 59-D-2 of Chapter 59.

3
4 *Planning Board* means the County Planning Board of the Maryland-National Capital Park and
5 Planning Commission.

6
7 *Planning Director* means the Director of the Montgomery County Park and Planning
8 Department, or the Director's designee.

9
10 *Preliminary plan of subdivision* means a plan for a proposed subdivision or resubdivision
11 prepared and submitted for approval by the Planning Board under Chapter 50 before preparation
12 of a subdivision plat.

13
14 *Project plan* means a plan or an amendment to a plan approved under Division 59-D-2 of
15 Chapter 59.

16
17 *Public utility* means:

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

21
22 *Qualified Professional* means a person who meets all applicable requirements under of Code of
23 Maryland Regulations 08.19.06.01.

24
25 *Reforestation or reforested* means the creation of a biological community dominated by trees and
26 other woody plants (including plant communities, the understory, and forest floor) which is at
27 least 10,000 square feet in area and 50 feet wide, and containing at least 100 live trees per acre,
28 with at least 50 percent of those trees having the potential of attaining a 2 inch or greater
29 diameter measured at 4.5 feet above the ground within 7 years. Reforestation for a linear project
30 which involves overhead transmission lines may consist of a biological community dominated by
31 trees and woody shrubs with no minimum height or diameter criteria.

32
33 *Retention* means the deliberate holding and protecting of existing forest and trees on the site.

34
35 *Sediment control permit* means a permit required to be obtained for certain land disturbing
36 activities:

- 37 (1) under Chapter 19, Article I;
38 (2) from the Washington Suburban Sanitary Commission for major utility construction as
39 defined under regulations of the Commission; or
40 (3) from a municipal corporation.

41
42 *Shrub layer* means a layer of woody plants below the canopy of trees, within a forest.

43
44 *Site plan* means a plan or an amendment to a plan approved under Division 59-D-3 of Chapter
45 59.

1 *Special exception* means a use approved under Article 59-G of Chapter 59.

2
3 *Special Protection Area (SPA)* means a geographic area designated by the County Council under
4 Section 19-62(a).

5
6 *Steep slope* means a slope in which the percent slope equals or exceeds 25 percent, or 15 percent
7 if associated with erodible soils in Special Protection Areas.

8
9 *Stream buffer* means a strip of land contiguous with and parallel to the bank of a perennial or
10 intermittent stream.

11
12 *Technical Manual* means a detailed guidance document used for administration of this Chapter
13 that is adopted by the Planning Board under Section 22A-15.

14
15 *Timber harvesting* means a tree cutting operation affecting one or more acres of forest or
16 developed woodland within a one-year period that disturbs 5,000 square feet or more of forest
17 floor. Timber harvesting does not include grubbing and clearing of root mass.

18
19 *Tract* means one or more lots, adjacent or confronting, that are described by deed or record plat.

20
21 *Tree* means a large, woody plant having one or several self-supporting stems or trunks and
22 numerous branches that reach a height of at least 20 feet at maturity.

23
24 *Tree cover* means the combined area, in square feet, of the crowns of all trees on a tract. For
25 replanting purposes, tree cover is the typical crown area for the specific tree at 20 years.

26
27 *Tree inventory* means the collection and presentation of information documenting the health and
28 structure of individual trees, assess the suitability for preservation, evaluates the impacts from
29 development, recommends trees to be removed and preserved for all trees on a tract.

30
31 *Tree protection plan* means a plan prepared in conjunction with a development application
32 indicating where trees are to be retained or planted, including specifications for tree preservation
33 before, during, and following construction.

34
35 *Variance* means relief from this Chapter. Variance does not mean a subdivision or zoning
36 variance.

37
38 *Watershed* means all lands lying within an area described as a watershed in the Countywide
39 Stream Protection Strategy.

40
41 *Wetland* means an area that is inundated or saturated by surface water or groundwater at a
42 frequency and duration sufficient to support, and that under normal circumstances does support,
43 a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly
44 known a hydrophytic vegetation.

45
46 **Sec. 22A-4. Persons Subject to the Forest Conservation Law**

1
2 (a) Persons subject to the Forest Conservation Law are subject to either a Level 1, Level 2 or a
3 Level 3 Review. The following must be submitted to the Montgomery County Planning
4 Department for each level of review:

- 5 (1) Level 1 Review requires the submission of a Natural Resource Inventory/Forest Stand
6 Delineation and a Forest Conservation Plan.
- 7 (2) Level 2 Review requires the submission of a Tree Survey, Tree Protection Plan, and a
8 Declaration of Intent.
- 9 (3) Level 3 Review requires the submission of a Declaration of Intent.

10
11 (b) The following persons are subject to Level 1 Review:

- 12 (1) A person required by law to obtain approval for a development plan, diagrammatic
13 plan, schematic development plan, project plan, preliminary plan of subdivision, or site
14 plan;
- 15 (2) A person required by law to obtain a sediment control permit or approval of a special
16 exception on a tract of land 40,000 square feet or larger, and who is not otherwise
17 required to obtain an approval under subsection (1);
- 18 (3) A person who performs any cutting or clearing, or any other land disturbing activity that
19 would directly threaten the viability of any champion tree, wherever located;
- 20 (4) A government entity subject to a mandatory referral, or a park facility plan, on a tract of
21 land 40,000 square feet or larger which is not excluded under subsection (b) or (c);
- 22 (5) A highway construction not excluded under subsections 22A-4(c);
- 23 (6) A public or private utility that proposes a cumulative limit of disturbance of 40,000
24 square feet or more for all stages of work in a public right-of-way or utility easement;
25 and
- 26 (7) Modifications to existing non-residential properties if more than 5,000 square feet of
27 forest will be cleared, or the modification removes any forest in an environmental buffer
28 or any forest located on a property in a special protection area which must submit a
29 water quality plan.

30
31 (c) Notwithstanding the provisions of the Level 1 Review, the following persons are subject to
32 Level 2 Review:

- 33 (1) a person who proposes construction on an existing single lot of 40,000 square feet or
34 greater in size of a dwelling house, an addition to a house, or an accessory structure
35 (such as a pool, tennis court, or shed), if the activity does not result in the cutting,
36 clearing, or grading of:
 - 37 (A) more than a total of 40,000 square feet of forest;
 - 38 (B) any forest in a environmental buffer,
 - 39 (C) any forest on property located in a special protection area which must submit a
40 water quality plan, and
 - 41 (D) any trees or forest that are subject to a previously approved forest conservation
42 plan;
- 43
44 (2) a person who proposes a minor subdivision under Section 50-35A(a)(1)-(3) involving a
45 lot line adjustment, conversion of an existing recorded outlot, or joining two or more
46 existing residential lots into one lot, if:

- 1 (A) the only development located on any resulting lot is a single family dwelling unit
 2 or an accessory structure (such as a pool, tennis court, or shed); and
 3 (B) development does not result in the cutting, clearing, or grading of:
 4 i) more than a total of 40,000 square feet of forest,
 5 ii) any forest in a environmental buffer,
 6 iii) any forest on property located in a special protection area which must submit a
 7 water quality plan, and
 8 iv) any trees or forest that are subject to a previously approved forest conservation
 9 plan;
- 10 (3) a person who proposes a modification to existing non-residential developed property if
 11 less than 5,000 square feet of forest will be cleared;
 12 (4) a government entity proposing a State or County highway construction activity that is
 13 subject to Section 5-103 of the Natural Resources Article of the Maryland Code., or
 14 Level 1 Review;

15
 16 (d) Notwithstanding the provisions of Level 1 Review, the following persons are subject to
 17 Level 3 Review:

- 18 (1) a person who proposes an agricultural activity that is exempt from both platting
 19 requirements under Section 50-9 and requirements to obtain a sediment control permit
 20 under Section 19-2(c)(2). Agricultural support buildings and related activities are
 21 exempt only if built using best management practices, as defined by the Natural
 22 Resources Conservation Service;
- 23 (2) a person proposing a tree nursery;
- 24 (3) a person applying for a special exception for an existing structure and the proposed use
 25 will not result in clearing of existing forest or trees;
- 26 (4) a person proposing a commercial logging and timber harvesting operation, including
 27 any harvesting conducted under the forest conservation and management program under
 28 Section 8-211 of the Tax-Property Article of the Maryland Code that:
 29 (A) has received approval from the County Arborist or designee that the logging or
 30 timber harvesting plan is not inconsistent with County forest management
 31 objectives and is otherwise appropriate; and
 32 (B) has received a sediment control permit from the Department of Permitting Services
 33 and posted the required financial security under Chapter 19. A person who
 34 qualifies under this subsection must provide a copy of all sediment control permits
 35 issued for commercial logging and timber harvesting operations to the Montgomery
 36 County Planning Department.
- 37 (5) a government entity proposing a governmental project reviewed for forest conservation
 38 purposes by the State Department of Natural Resources under the Code of Maryland
 39 Regulations;
- 40
 41 (6) a person conducting routine maintenance of public utility easements and rights-of-way,
 42 and routine maintenance of stormwater management facilities that are not subject to an
 43 existing conservation easement, except for the clearing of access roads;
- 44 (7) a person conducting utility or other work that is of an emergency nature;
- 45 (8) a person conducting noncoal surface mining regulated under Title 7 of the Natural
 46 Resources Article of the Maryland Code;

- 1 (9) a person cutting or clearing public utility rights-of-way or land for electric generating
 2 stations licensed under Section 54A and 54B or Section 54I of Article 78 of the
 3 Maryland Code, provided that certificates of public convenience and necessity have
 4 been issued in accordance with Section 5-1603(f) of the Natural Resources Article of
 5 the Maryland Code.

6
 7 **Article II. Natural Resource Inventory, Forest Stand Delineations,
 8 Forest Conservation Plans, Tree Inventories, and Tree Protection
 9 Plans**

10
 11 **Sec. 22A-5. Required Submittals.**

12
 13 (a) *Level 1 approval required.* A person who is subject to Level 1 review must submit to the
 14 Montgomery County Planning Department a natural resource inventory/forest stand delineation
 15 and forest conservation plan.

16 (1) *Natural Resource Inventory/Forest Stand Delineation.*

17 (A) A Natural Resource Inventory/Forest Stand Delineation must be signed by a
 18 qualified professional. A Natural Resource Inventory/Forest Stand Delineation
 19 must contain: topographic, hydrographic, soils and geologic information;
 20 qualitative and quantitative information on trees and forest cover; and other
 21 information or requirements specified by regulations or in the technical manual.

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

24 (C) An approved Natural Resource Inventory/Forest Stand Delineation is not valid after
 25 2 years unless a qualified preparer recertifies the delineation, or a forest
 26 conservation plan is accepted as complete.

27 (2) *Forest conservation plan.*

28 (A) A forest conservation plan must be signed by a qualified professional and must
 29 contain information on the extent and characteristics of the trees and forested area to
 30 be retained or planted, proposed locations for on-site and off-site reforestation,
 31 scheduling, protective measures, a binding maintenance agreement effective for at
 32 least 5 years, a binding agreement to protect forest conservation areas, and other
 33 information or requirements specified by regulation or technical manual.

34 (B) A forest conservation plan may include protective measures designed to conserve
 35 trees on the subject tract, or on adjacent properties, from adverse impacts that may
 36 be caused by the development or land disturbing activities proposed for the tract.

37 (C) A forest conservation plan may be reviewed in 2 stages with the submission of a
 38 preliminary and a final forest conservation plan as specified under Section 22A-6.

39
 40 (b) *Level 2 approval required.* A person who is subject to Level 2 must submit to the
 41 Montgomery County Planning Department a tree inventory, tree protection plan and a
 42 Declaration of Intent.

43 (1) *Tree Inventory.*

44 (A) A tree inventory must be signed by a certified arborist and must: assess, identify,
 45 and characterize the tree species; estimate the height, age, and canopy of each tree;

- 1 document the diameter of all trees on a tract; and provide other information or
 2 requirements specified by regulation or in the technical manual.
- 3 (B) The Planning Director may waive any requirement for information that is
 4 unnecessary for a specific site.
- 5 (C) An approved tree inventory is not valid after 2 years unless a certified arborist
 6 recertifies the tree inventory or a tree protection plan is approved.
- 7 (2) *Tree Protection Plan*
- 8 (A) Tree Protection Plan must be signed by a certified arborist and used to protect trees
 9 during construction. A tree protection plan must contain: trees to be retained and
 10 removed; the proposed limit of disturbance; existing and proposed utility
 11 connections; detailed drawings and measures to protect trees; and any other
 12 information or requirements specified by regulation or in the trees technical
 13 manual.
- 14 (B) A Tree Protection Plan may include protective measures designed to conserve trees
 15 on adjacent property from adverse impacts that may be caused by the development
 16 or land disturbing activities proposed for the tract.
- 17 (3) *Declaration of Intent.*
- 18 (A) A person seeking a Level 2 Review shall submit a Declaration of Intent to verify
 19 that the proposed activity does not require a Level 1 Review.
- 20 (B) No regulated activity may occur on the area covered by the Declaration of Intent
 21 within 5 years of the completion of cutting, clearing or grading of forest and tree
 22 resources.
- 23 (C) A person failing to file a Declaration of Intent or found not in compliance with a
 24 Declaration of Intent may be required to: Submit for a Level 1 review; pay a
 25 penalty fee established by fee schedules approved by resolution of the county
 26 council per square foot of forest cut or cleared, but in no case less than the
 27 minimum set by state law;
 28
- 29 (c) *Level 3 approval required.* A person who is subject to Level 3 must submit to the
 30 Montgomery County Planning Department a Declaration of Intent.
- 31 (1) *Declaration of Intent.*
- 32 (A) A person seeking a Level 3 Review shall submit a Declaration of Intent to verify
 33 that the proposed activity does not require a Level 1 Review.
- 34 (B) No regulated activity may occur on the area covered by the Declaration of Intent
 35 within 5 years of the completion of cutting, clearing or grading of forest resources.
- 36 (C) A person failing to file a Declaration of Intent or found not in compliance with a
 37 Declaration of Intent may be required to: Submit for a Level 1 review; pay a
 38 penalty fee established by fee schedules approved by resolution of the county
 39 council per square foot of forest cut or cleared, but in no case less than the
 40 minimum set by state law;
 41
- 42 **Sec. 22A-6. Review Procedures.**
- 43
- 44 (a) Level 1 Review.
- 45 (1) Natural Resource Inventory/Forest Stand Delineation. A person subject to a Level 1
 46 review must submit to the Montgomery County Planning Department a Natural
 47 Resource Inventory/Forest Stand Delineation. Within 30 days of receipt, the Planning

1 Director must notify the person whether the natural resource inventory/forest stand
 2 delineation is complete. An incomplete application must be denied. If the Planning
 3 Director fails to act on the submission within 30 days, the delineation will be treated as
 4 approved. The Planning Director may extend the deadline for an additional 15 days for
 5 extenuating circumstances.

- 6 (2) Preliminary Forest conservation plan. Upon notification that the natural resource
 7 inventory/forest stand delineation is approved, a person must submit a preliminary
 8 forest conservation plan to the Montgomery County Planning Board, or Planning
 9 Director. The preliminary forest conservation plan must be considered in conjunction
 10 with any application to which it is a necessary component.
- 11 (3) Final Forest Conservation Plan. Upon approval of the Preliminary Forest Conservation
 12 Plan a Final Forest Conservation Plan must be submitted concurrently with site plan,
 13 record plat, or sediment control plan as applicable.
- 14 (A) A final forest conservation plan associated with a site plan must be considered in
 15 conjunction with the site plan to which it is a necessary component.
- 16 (B) A final forest conservation plan submitted associated with a record plat or sediment
 17 control plan must be considered in conjunction with those plans. Within 45 days
 18 from receipt of the final forest conservation plan, the Planning Director must notify
 19 the applicant whether the forest conservation plan is complete and approved. If the
 20 applicant is not notified within 45 days, the plan will be treated as approved. The
 21 Planning Director may extend the deadline for an additional 15 days for
 22 extenuating circumstances.
- 23 (4) Coordination and Special Provisions.
- 24 (A) Coordinated with project review. The Planning Director must coordinate review of
 25 the forest conservation plan with the Director of Environmental Protection, the
 26 Director of Permitting Services, the Washington Suburban Sanitary Commission,
 27 other relevant regulatory agencies, and entities that will provide public utilities to
 28 the tract, to promote consistency between the objectives of this Chapter and other
 29 development requirements. To the extent practicable, entities providing public
 30 utilities should design facilities that will serve a tract in a manner that avoids
 31 identified conservation areas and minimize tree loss.
- 32 (B) Special Exceptions. If a special exception proposal is subject to the requirements
 33 of this Chapter, the applicant must submit a Natural Resource Inventory/Forest
 34 Stand Delineation to the Planning Director before the Board of Appeals may
 35 consider the application for the special exception. The Board of Appeals must
 36 consider the preliminary forest conservation plan when approving the special
 37 exception application and must not approve a special exception application that is
 38 in conflict with the preliminary forest conservation plan. A final forest conservation
 39 plan must be submitted before obtaining a sediment control permit, or at the time of
 40 preliminary plan of subdivision or site plan application, if required.
- 41 (C) Sediment Control Permit. If an application for a sediment control permit is subject
 42 to the requirements of this Chapter, the applicable sediment control permit issuing
 43 authority must direct the applicant to the Planning Department for a determination.
 44 If the Planning Director finds the sediment control permit application to be subject
 45 to this Chapter, the applicant must submit a Natural Resource Inventory/Forest
 46 Stand Delineation to the Planning Director for review. The applicable sediment

1 control permit issuing authority must not approve a sediment control permit that is
2 conflict with an approved forest conservation plan.

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

- 6 i) field inspections or other evaluation reveals minor inadequacies of the plan and
7 modification of the plan in order to remedy such inadequacies will not
8 negatively affect the final approved plan; or
9 ii) each modification is minor and does not impact any forest in a priority area
10 (such as substituting an on-site conservation area for an equal or greater on-site
11 area of similar character, or substituting a marginal on-site conservation area for
12 equal or greater amount of off-site priority area); or
13 iii) action is otherwise required in an emergency situation.

14
15 Any other modification must be approved by either the Planning Board or Director,
16 whichever approved the forest conservation plan.
17

18 (b) Level 2 Review. A person subject to a Level 2 review must submit to the Montgomery
19 County Planning Department the Tree Inventory and Tree Protection Plan concurrently with a
20 Declaration of Intent. Within 30 days of receipt, the Planning Director must notify the person
21 whether the tree inventory/tree protection plan is complete. An incomplete application must be
22 denied. If the Planning Director fails to act on the submission within 30 days, the tree inventory
23 and tree protection plan will be treated as approved. The Planning Director may extend the
24 deadline for an additional 15 days for extenuating circumstances.
25

26 (c) Level 3 Review. A person subject to a Level 3 review must submit to the Montgomery
27 County Planning Department a Declaration of Intent. Within 30 days of receipt, the Planning
28 Director must notify the person whether the Declaration of Intent is complete. An incomplete
29 application must be denied. If the Planning Director fails to act on the submission within 30
30 days, the Declaration of Intent will be treated as approved. The Planning Director may extend the
31 deadline for an additional 15 days for extenuating circumstances.
32

33 **Sec. 22A-7. Retention, afforestation, and reforestation requirements for Level 1 Review.**
34

35 (a) General. The forest conservation plan must, to the maximum extent feasible, retain certain
36 vegetation and specific areas in an undisturbed condition unless the Planning Board, or the
37 Planning Director as the case may be, finds retention is not feasible without undesirable
38 alterations to the proposal the forest conservation plan must mitigate for the loss of forest and
39 trees in the following order of preference:

- 40 (1) On site reforestation or afforestation;
41 (2) Offsite forest planting within the same watershed;
42 (3) Onsite nonnative and invasive management control with supplemental planting;
43 (4) Forest mitigation banks;
44 (5) In-lieu fee;
45 (6) Onsite landscaping with an approved plan.
46

1 (b) How to Calculate the Requirements

2 (1) Table.

3

Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area for Level 1 Reviews		
Land Use Type	Conservation Threshold	Afforestation Threshold
Agricultural and Resource Areas	50%	20%
Medium Density Residential Areas	30%	25%
Institutional Development Areas	25%	20%
High Density Residential Areas	25%	20%
Mixed-use Development Areas	20-25% ¹	20%
Planned unit Development Areas	20-25% ¹	20%
Commercial and Industrial Areas	20	20%
1. The residential and institutional portions of the tract must meet the 25% requirement. All other uses may use the 20% requirement.		

- 4
- 5 (2) Reforestation. The forest conservation plan must provide for reforestation as follows:
- 6 (A) For all existing forest cover measured to the nearest 1/10 acre cleared on the net
- 7 tract area below the applicable forest conservation threshold, the area of forest
- 8 removed must be reforested at a ratio of 2 acres planted for every one acre
- 9 removed.
- 10 (B) For all existing forest cover measured to the nearest 1/10 acre cleared on the net
- 11 tract area above the applicable forest conservation threshold, the area of forest
- 12 removed must be reforested at a ratio of ¼ acre planted for every one acre removed.
- 13 (C) Each acre of forest retained on the net tract area above the applicable forest
- 14 conservation threshold must be credited against the total number of acres required
- 15 to be reforested.
- 16 (D) A regulated activity under this Chapter within the net tract area that occurs wholly
- 17 or partly in areas regulated as nontidal wetlands is subject to both the nontidal
- 18 wetland regulatory requirements and the requirements of this Chapter. However,
- 19 any area of forest within the net tract area that is retained, including forest in
- 20 nontidal wetlands, must be counted towards forest conservation requirements under
- 21 this Chapter.
- 22 (3) Afforestation.
- 23 (A) A site with less than 20 percent of the net tract area in forest cover must be
- 24 afforested in accordance with the required afforestation percentages shown on the
- 25 table in subsection (1) of this subsection.
- 26 (B) Afforestation must be accomplished by the planting, maintenance, and
- 27 establishment of forest cover unless a person demonstrates to the satisfaction of the
- 28 Planning Board or Planning Director, as the case may be. Afforestation may be
- 29 satisfied by tree cover for a site because of its location in an urban setting,
- 30 redevelopment context, high-density residential, commercial, industrial, planned
- 31 unit development, or institutional area (as defined in Section 22A-3), or similar
- 32 reason, afforestation requirements may be satisfied by tree cover.

1
2 (c) Standards for reforestation and afforestation.

3 (1) Priorities for Reforestation and Afforestation.

4 (A) Except as provided by regulation or the technical manual or otherwise in (1) of this
5 subsection, the preferred sequence for afforestation and reforestation is, described
6 in subsection (a).

7 (B) Government Considerations. The sequence provided in subparagraph (A) of this
8 paragraph may be modified for a specific project if the applicant demonstrates to
9 the satisfaction of the Planning Board or the Planning Director, as the case may be
10 that a different sequence is necessary;

11 i) To achieve the objectives of a master or sector plan or other county land use
12 policies or to take advantage of opportunities to consolidate forest conservation
13 efforts;

14 ii) For public site acquired or required to be dedicated before July 1, 1991, to
15 ensure that the site can be used for its intended purpose without major design
16 changes; or

17 iii) For educational, recreational, and public safety facilities to ensure that public
18 safety is not compromised.

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

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

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

27 (C) For sites located in existing population centers, off-site street trees may be used if
28 the applicant demonstrates to the satisfaction of the Planning Board, or Planning
29 Director that on-site afforestation is inappropriate.

30
31 (d) Planned Unit Developments; Other Staged Development. Notwithstanding any other
32 provision of this Section, the Planning Board may allow any afforestation or reforestation
33 requirement for a planned unit development to be calculated and satisfied within the total area
34 covered by the development plan or project plan instead of the net tract area. Similarly, the
35 Planning Board may allow any afforestation or reforestation requirement applicable to a staged
36 development subject to a single preliminary plan of subdivision but with separate site plan
37 reviews for each stage to be calculated and satisfied using the total area covered by the
38 preliminary plan of subdivision.

39
40 (e) Special provisions for minimum retention, reforestation and afforestation.

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

- 1 (2) Retention, reforestation and afforestation. Forest retention should be maximized where
 2 possible on each site listed in this subsection. At a minimum, on-site forest retention,
 3 and in some cases reforestation and afforestation, must be required as follows:
 4 (A) In an agricultural and resource area, on-site forest retention must equal 25% of the
 5 net tract area.
 6 (B) In a planned development or a site development using a cluster or other optional
 7 method of development in a one-family residential zone, on-site forest retention
 8 must equal the applicable conservation threshold in subsection (b). This
 9 requirement also applies to any site seeking a waiver or variance from base zone
 10 standards under Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or
 11 59-C-7.131, if as a condition of the waiver or variance the Planning Board or
 12 County Council must find that the resulting development is environmentally more
 13 desirable.
 14 (C) On a site covered by this subsection, if existing forest is less than the minimum
 15 required retention, all existing forest must be retained and on-site afforestation up
 16 to the minimum standard must be provided. If existing forest is less than the
 17 applicable afforestation threshold in subsection (b), the afforestation threshold is
 18 the minimum on-site forest requirement.
 19 (D) If a site covered by this subsection is unforested, on-site afforestation must equal
 20 the applicable afforestation threshold.
 21 (E) If the Planning Board or Planning Director, as appropriate, finds that forest
 22 retention required in this subsection is not possible, the applicant must provide the
 23 maximum possible on-site retention in combination with on-site reforestation and
 24 afforestation, not including landscaping and street trees.
 25 (F) Retention, reforestation, and afforestation must adhere to the priorities and
 26 sequence established in subsections (b) and (c).
 27
 28 (f) In lieu fee.
 29 (1) General. If a person satisfactorily demonstrates that the requirements for reforestation
 30 or afforestation on-site or off-site cannot be reasonably accomplished, the person must
 31 contribute money to the forest conservation fund at a rate specified by the County
 32 Council by law or resolution, but not less than the rate required under Section 5-1610 of
 33 the Natural Resources Article of the Maryland Code. The requirement to contribute
 34 money must be met prior to any clearing or grading occurring within the tract.
 35 (2) Specific development situations. Except as specified in subsection (e), the Planning
 36 Board or Planning Director may allow an applicant to pay into the County Forest
 37 Conservation Fund instead of providing afforestation or reforestation in the following
 38 situations:
 39 (A) Afforestation using tree cover. If an applicant has shown that on-site afforestation
 40 using forest cover is not appropriate under subsection (b)(3)(B), the applicant may
 41 pay the fee instead of using tree cover to meet any afforestation requirement.
 42 (B) Afforestation or reforestation using tree cover. An applicant may pay the fee
 43 instead of using credit for tree cover.
 44 (C) Afforestation on sites with no priority planting areas. If a site has afforestation
 45 planting requirements and the Planning Board or Planning Director, as appropriate,
 46 finds that no on-site priority planting area is present and no other appropriate on-

1 site planting area is available, the applicant may pay the fee instead of doing off-
2 site afforestation.

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

8 (E) Sites with minor reforestation requirements. An applicant may pay the fee instead
9 of on-site or off-site reforestation for any plan where overall reforestation
10 requirements are less than ½ acre and the Planning Board or Planning Director, as
11 appropriate, finds that no on-site priority planting area is present and no other
12 appropriate on-site planting area is available.

13
14 (g) Agreements and Long-Term Protection.

15 (1) Maintenance agreement. A forest conservation plan must include a five-year binding
16 agreement for maintenance of conservation areas, including the watering (as practical),
17 feeding, replanting of areas to be afforested or reforested, and non-native and invasive
18 management. The 5-year period starts upon satisfactory final inspection of the
19 conservation measures required under the forest conservation plan. A staged project
20 may have more than one agreement.

21 (2) Long-term protective measures. A forest conservation plan must include appropriate
22 measures for the protection of conservation areas; limitations on the use of these areas
23 consistent with conservation and management practices; and legal instruments such as
24 conservation easements, deed restrictions, covenants, and other agreements, as
25 necessary.

26
27 (h) Financial Security.

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

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

32 (B) full payment of funds to be paid instead of afforestation or reforestation, if required
33 under subsection (g).

34 (C) compliance with all requirements of a tree protection plan.

35 (2) Preferred form. The preferred financial security instruments are an irrevocable letter of
36 credit or a cash bond. The letter of credit must expressly state that the total sum is
37 guaranteed to be available and payable on demand directly to the Maryland-National
38 Capital Park and Planning Commission in the event of forfeiture. A certificate of
39 guarantee or a surety bond may also be used, including a bond payable to the
40 Commission and County that additionally guarantees completion of public
41 improvements associated with the proposed development. The financial security
42 instrument must be made payable to the Commission and must be of a form and content
43 satisfactory to the Commission and its legal counsel.

44 (3) When required. The financial security instrument must be provided prior to any land
45 disturbing activity.

46 (4) Amount required.

- 1 (A) If the financial security is required under subparagraph (1)(A) of this subsection,
 2 the security instrument must be in an amount equal to i) the in lieu fee rate; or ii)
 3 the estimated cost of afforestation, reforestation, and maintenance of planted areas
 4 as well as non-native and invasive management. The instrument must include a
 5 provision for adjusting the amount based on actual costs. The Planning Director
 6 must notify the obligee of any proposed adjustment and provide the opportunity for
 7 an informal conference.
- 8 (B) If the financial security is required under subparagraph (1)(B) of this subsection,
 9 the security instrument must be in an amount equal to the in lieu payment.
- 10 (5) Release. The financial security instrument must be in effect until all requirements have
 11 been fulfilled to the satisfaction of the Planning Director. The instrument may provide
 12 for the partial release or return of the instrument based on successful implementation of
 13 phases of the forest conservation plan.
- 14 (6) Events of forfeiture. The financial security instrument may be subject to forfeiture on:
 15 (A) failure of the obligee to perform the work under the forest conservation plan in
 16 accordance with the required schedule; or
 17 (B) failure of the obligee to pay a required in lieu fee in a timely manner.
- 18 (7) Forfeiture proceedings.
 19 (A) The Planning Director must notify the obligee, by certified mail, of the intention of
 20 the Commission to initiate forfeiture proceedings.
 21 (B) The obligee has 30 days from the receipt of the notice of forfeiture to show cause
 22 why the financial security should not be forfeited.
 23 (C) If the obligee fails to show cause, the financial security instrument must be
 24 forfeited.
- 25 (8) Exception. This subsection does not apply to governmental entities.

26
 27 **Sec. 22A-8. Forest mitigation banks.**
 28

- 29 (a) A person may create a forest mitigation bank from which applicants may buy credits by
 30 afforesting or reforesting an area of land under a forest mitigation bank plan approved by the
 31 Planning Director.
 32
- 33 (b) Forest mitigation banks can be created by permanently protecting: existing forest, planting
 34 and protecting new forests in unplanted in environmental buffers or in areas contiguous to
 35 existing and protected forests, or a combination of the two.
 36
- 37 (c) The area of land where the bank is planted must be at least 1 acre.
 38
- 39 (d) A forest mitigation bank must use native plants for afforestation and reforestation.
 40
- 41 (e) A person proposing to create a forest mitigation bank must submit a plan to the Planning
 42 Director, which must include:
 43 (1) a 5-year maintenance agreement which meets the standards in subsection 22A- 9(h)(1);
 44 (2) all information required by subsection 22A-5(a)(2) for a forest conservation plan; and
 45 (3) the draft easement, covenants, or deed restrictions for the area to be sold to the
 46 developer when credits are withdrawn from the bank.

1
2 (f) Forest mitigation banks must be established in accordance with the priority areas described
3 in subsection 22A-7(c)(3), or in areas identified in a master plan or functional plan.
4

5 (g) Credits must not be debited from a forest mitigation bank until all trees have been planted
6 and accepted by the Planning Director, and either financial security which meets the standards in
7 subsection 22A-7(f) has been provided or the Planning Director has found that a sufficient
8 number of trees have successfully survived for 5 years after planting.
9

10 (h) To debit credits from an approved forest mitigation bank, the easement, covenants, or deed
11 restrictions which assure that the newly reforested or afforested area of land remains a forest in
12 perpetuity must be conveyed to the Planning Board or its assignee and the applicant must show
13 that credits are available and the applicant has the right to debit them. The credits must buy an
14 amount of land equal to the applicant's off-site reforestation or afforestation requirements under
15 its approved forest conservation plan. (2001 L.M.C., ch. 19, § 1.)
16

17 **Article III. Enforcement, Appeals, and Variances.**

18 **Sec. 22A-9. Inspections and notification.**

19 (a) Permission to gain access. Representatives authorized by the Planning Director may enter
20 properties subject to this Chapter for the purpose of inspection, review and enforcement.
21

22 (b) Forest Conservation Plan to be on site; field markings. A copy of the approved forest
23 conservation plan must be available on the site for inspection by representatives authorized by
24 the Planning Director. Field markings must exist on site during installation of all protective
25 devices, construction, or other land disturbing activities.
26
27
28

29 (c) Required Inspections.

- 30 (1) The Planning Department must conduct field inspections of a site subject to confirm the
31 information submitted on a natural resource inventory/forest stand delineation.
32 (2) The Planning Department must conduct field inspections of a site subject to an approved
33 forest conservation plan as follows:
34 (A) After the limits of disturbance have been staked and flagged, but before any
35 clearing or grading begins;
36 (B) After necessary stress reduction measures have been completed and the protection
37 measures have been installed, but before any clearing or grading begins;
38 (C) After completion of all construction activities to determine the level of compliance
39 with the provisions of the forest conservation plan;
40 (D) Before the start of any required reforestation and afforestation planting;
41 (E) After required reforestation and afforestation planting has been completed to verify
42 the planting is acceptable and begin the 5-year maintenance period; and
43 (F) At the end of the 5-year maintenance period to determine the level of compliance
44 with the provisions of the planting plan and, if appropriate, authorize release of the
45 financial security.

- 1 (3) The Planning Department must conduct field inspections of a site subject to a tree
2 protection plan as follows:
3 (A) After the limits of disturbance have been staked and flagged, but before any
4 clearing or grading begins;
5 (B) After necessary stress reduction measures have been completed and the protection
6 measures have been installed, but before any clearing or grading begins; and
7 (C) After completion of all construction activities to determine the level of compliance
8 with the provisions of the tree protection plan.
9

10 (d) Other inspections. The Planning Director may authorize additional inspections or
11 meetings as necessary to administer this Chapter.
12

13 (e) Required Scheduling of Inspections for Forest Conservation and Tree Protection Plans.
14 Persons must notify the Planning Director 7 days prior to scheduling inspections under
15 subsection (c).
16

17 **Sec. 22A-10. Violations, penalties and other remedies.**
18

19 Violations, penalties and other remedies to follow Enforcement Rules in 50-41 of the
20 Montgomery County Code. (To be addressed and coordinated with M-NCPPC enforcement
21 rules)
22

23 **Sec. 22A-11. Corrective order.**
24

25 Corrective order to follow Enforcement Rules in 50-41 of the Montgomery County Code. (To be
26 addressed and coordinated with M-NCPPC enforcement rules)
27

28 **Sec. 22A-12. Plan suspension and revocation.**
29

30 Plan suspension and revocation to follow Enforcement Rules in 50-41 of the Montgomery
31 County Code. (To be addressed and coordinated with M-NCPPC enforcement rules)
32

33 **Sec. 22A-13. Appeals.**
34

35 (a) Natural resource inventory/forest stand delineations and forest conservation plans or tree
36 protection plans approved by the Planning Director.

- 37 (1) Appeal to Planning Board. Upon receipt of the Planning Director's written decision on a
38 natural resource inventory, forest stand delineation or forest conservation plan or tree
39 protection plan, an applicant has 30 days from the date of the Planning Director's
40 written decision to appeal to the Planning Board.

- 41 (2) Hearing; decision. The Planning Board must hold a de novo hearing. The Board must
42 issue and written resolution to the applicant setting forth its decision. For purposes of
43 judicial review, the decision of the Planning Board constitutes final agency action.
44 Applicants may petition for judicial review of the Planning Board decision in
45 accordance with Maryland 7-200 Rules.
46

1 (b) Forest conservation plans or tree protection plans and variances approved by the Planning
 2 Board. A person aggrieved by the decision of the Planning Board on the approval, denial, or
 3 modification of a forest conservation plan or tree protection plan (including a request for a
 4 variance) may file a petition for judicial review of the administrative agency decision on the
 5 development approval in accordance with the Maryland Rules of Court and any other law
 6 applicable to the proceeding.

7
 8 **Sec. 22A-14. Variance provisions.**
 9

10 (a) Written request. An applicant may request in writing a variance from this Chapter or any
 11 regulation adopted under it if the applicant demonstrates that enforcement would result in
 12 unwarranted hardship to the person. A request for a variance suspends the time requirements in
 13 Section 22A-6 until such time the Planning Board has acted upon the request.

14
 15 (b) Application requirements. An application for a variance must:

- 16 (1) describe the special conditions peculiar to the property which would cause the
 17 unwarranted hardship;
- 18 (2) describe how enforcement of these rules will deprive the landowner of rights commonly
 19 enjoyed by others in similar areas;
- 20 (3) verify that State water quality standards will not be violated or that a measurable
 21 degradation in water quality will not occur as a result of the granting of the variance;
 22 and
- 23 (4) provide any other information appropriate to support the request.

24
 25 (c) Referral to other agencies. Before considering a variance, the Planning Board must refer a
 26 copy of each request to the County Arborist, Planning Director, and other appropriate officials or
 27 agencies for a written recommendation before acting on the request. Recommendations must be
 28 submitted to the Planning Board within 30 days from the receipt of the referral or the
 29 recommendation must be presumed to be favorable.

30
 31 (d) Minimum criteria. A variance may only be granted if it meets the provisions of subsection
 32 (a) and (b) above. A variance must not be granted if granting the request:

- 33 (1) will confer on the applicant a special privilege that would be denied to other applicants;
- 34 (2) is based on conditions or circumstances which are the result of the actions of the
 35 applicant;
- 36 (3) arises from a condition relating to land or building use, either permitted or
 37 nonconforming, on a neighboring property; or
- 38 (4) will violate State water quality standards or cause measurable degradation in water
 39 quality.

40
 41 (e) Approval procedures; Conditions. The Planning Board must make findings that the
 42 applicant has met all requirements of this Section before granting a variance. Appropriate
 43 conditions may be imposed to promote the objectives of this Chapter and protect the public
 44 interest.

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

- 3 (1) Notice of a pending variance request must be given to the Department of Natural
4 Resources within 15 days of receipt of a request for a variance.
- 5 (2) The Department of Natural Resources may initiate or intervene in an administrative,
6 judicial or other original proceeding or appeal in the State concerning an approval of a
7 variance. (1992 L.M.C., ch. 4, § 1)

8 9 **Article IV. Administration.**

10 11 **Sec. 22A-15. General.**

12
13 (a) Regulations. The Planning Board must adopt regulations, including necessary procedures,
14 to administer this Chapter. In adopting the regulations, the Board must follow the adoption
15 procedures for a Method (2) regulation under Section 2A-15 and any requirements applicable
16 under State law. However, a proposed regulation of a procedural nature or that would implement
17 changes in State law or regulation, may be adopted under Method (3) if it is consistent with this
18 Chapter.

19
20 (b) Technical manual. The Planning Director must prepare a technical manual that must
21 include guidance and methodologies for:

- 22 (1) preparing and evaluating a forest stand delineation/natural resource inventory;
- 23 (2) preparing and evaluating a forest conservation plan, including priorities for forest
24 retention, reforestation, and afforestation, and a recommended tree species list;
- 25 (3) preparing and evaluating a tree survey and tree protection plan;
- 26 (4) providing forest or tree protective measures during and after clearing or construction,
27 including planting, tree relocation, and maintenance;
- 28 (5) inspection and monitoring of sites for compliance with forest conservation and tree
29 protection plans; and
- 30 (6) other appropriate guidance for program requirements consistent with this Chapter and
31 the regulations.

32
33 (b) Administrative fee. The Planning Board must establish a fee schedule that at least partially
34 covers the costs to administer this chapter. Fee schedules may be reviewed as needed.

35
36 (c) Reports. The Planning Board must make all reports on the County forest conservation
37 program to the General Assembly and State Department of Natural Resources that are required
38 under State law or regulation. The reports must be transmitted to the County Arborist, County
39 Council, and County Executive.

40
41 (d) List of Off-Site Property for Mitigation. The Planning Director may develop and maintain
42 a list of properties suitable for off-site mitigation required under forest conservation plans.

43 44 **Sec. 22A-16. Forest conservation fund.**

1 Money deposited into the fund must be used in accordance with the adopted County budget
2 and in accordance with the following:

3
4 (a) In lieu fees. Money deposited in the forest conservation fund must be spent on the
5 reforestation and afforestation for which the money is deposited, including costs directly related
6 to site identification, acquisition, design, and preparation, and must not revert to the general
7 fund. The permanent preservation of priority forests, including identification and acquisition of
8 a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest
9 preservation for each acre of planting required. Funds remaining after all reforestation and
10 afforestation requirements are satisfied may be spent on any other tree conservation activity,
11 including street tree planting.

12
13 (b) Penalties. Money collected for noncompliance with a forest conservation plan or the
14 associated 5-year maintenance agreement must be deposited in a separate account in the forest
15 conservation fund and must not revert to the general fund. Money deposited in this fund may be
16 used to administer this Chapter or any purpose set forth in the fund. (1992 L.M.C., ch. 4, § 1;
17 2001 L.M.C., ch. 19, § 1.)

18 **Article V. County Arborist.**

19 **Sec. 22A-17. County Arborist.**

20
21 (a) Appointment. The Director of the Department of Environmental Protection must appoint a
22 person to serve as County Arborist. The County Arborist functions within the Department of
23 Environmental Protection.

24
25 (b) Qualifications. The County Arborist must have relevant experience and an advanced
26 degree in horticulture, forestry, forest ecology, plant pathology, landscape architecture, or other
27 related field, or an equivalent combination of education and experience. The County Arborist
28 must be licensed as a tree expert under State law.

29
30 (c) Duties. The County Arborist has the following functions related to resource management
31 and protection of forest and trees in the County:

- 32 (1) develop a comprehensive County conservation and management strategy, including
33 programs designed to promote afforestation and reforestation in the County, and the
34 survival of historic trees and any endangered tree species;
 - 35 (2) advise the County Executive and County Council on the effectiveness of County
36 programs for controlling tree pests and diseases;
 - 37 (3) review and approve proposed commercial logging and timber harvesting operations
38 under Article II;
 - 39 (4) review variance requests and reports under Article II;
 - 40 (5) identify offsite forest planting and forest retention areas for County projects subject to
41 this Chapter;
 - 42 (6) provide liaison with citizens and businesses on forest and tree conservation issues and
43 develop appropriate mechanisms for public input on conservation strategies; and
 - 44 (7) any other duties required by law or assigned by the County Executive.
- 45
46