

CHAPTER 22A.  
FOREST  
CONSERVATION  
- TREES -  
REGULATIONS

2011

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**COMCOR - Code of Montgomery County Regulations**  
**CHAPTER 22A. FOREST CONSERVATION - TREES - REGULATIONS**

**22A.00.01.01 Preamble**

(a) Purpose. The proposed regulation amends Montgomery County Planning Board Regulation No. 1-97, Forest Conservation Regulations to update and clarify existing provisions and to add the regulatory provisions from the existing Trees Technical Manual, including updating and clarifying these provisions as necessary.

(b) Summary. Comment Deadline: October 31, 2001.

(c) Address. Countywide Planning Division-Environmental Planning, The Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20910.

(d) Staff Contact. Cathy Conlon, (301) 495-4540.

**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 approvals, special exception applications, or sediment control permit applications.

**22A.00.01.03 Transition Provision**

For purposes of subsection 22A-7(a)(2) of the Forest Conservation Law, the term “substantially complete” means a plat that has received Planning Board approval by July 1, 1992.

A. The terms in § B of this regulation have the meaning indicated. Terms not defined in this regulation have the meanings given to them in Chapter 22A of the County Code.

B. Terms Defined.

(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 plants (including plant communities, the understory, and forest floor), which is at least 10,000 square feet in area and 50 feet wide, and containing at least 100 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 subdivision or site plan approval, a grading or sediment control permit, or project plan approval if the applicant is a State or local agency; or who has received approval of a forest stand delineation or forest conservation plan.

- (4) “Break-even point” means an exact level of forest retention that precludes the need for reforestation.
- (5) “Champion tree” means the largest tree of its species within the United States, the State, county or municipality, as appropriate.
- (6) “Conservation easement” means a restriction on the land and the natural features on this land. This easement is shown on the record plat and its terms and conditions are recorded in the county’s land records.
- (7) “Conservation threshold” means a specific percentage of a tract which is used in determining reforestation requirements per Sections 22A-12(c), and (f) of the Forest Conservation Law.
- (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 Natural Resources Article, § 4-2A-06 or 10-2A-06, Maryland Code.
- (9) “Critical habitat for endangered species” means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, § 4-2A-04 or 102A-04, Annotated Code of Maryland.
- (10) “Critical root zone” means the zone in which the roots of a tree are located. It is also the area around a tree which should be protected unless other supplemental protection measures are provided.
- (11) “Development application” means an application made to the Planning Board, Board of Appeals, Department of Permitting Services, or the Planning Director for plan approval or sediment control permit.
- (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.
- (13) “Development program” means a sequence of construction events and timing for submittal of the major forest conservation program elements.
- (14) “Development project” means the grading or construction activities occurring on a specific tract. This includes redevelopment projects.
- (15) “Extenuating circumstances” means conditions requiring extension of a set time limit to process an application, render a decision, or conduct a public hearing.
- (16) “Field survey” means a field investigation of the environmental characteristics of a site, including existing forest.
- (17) “Flood, One Hundred-Year” means a flood which has a 1 percent statistical probability of being equaled or exceeded in any given year, or which occurs, on average, once every 100 years. Unless otherwise stated, this calculation is based on the contributing watershed being completely under existing zoning.

- (18) “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.
- (19) “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 forest 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.
- (20) “Forest conservation plan” means a plan which outlines the strategies and specific plans proposed for retaining, protecting, and reforesting or afforesting areas on a site.
- (21) “Forest conservation worksheet” means a step-by-step form for determining compliance with the requirements of the forest conservation law.
- (22) “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 county, or by the MD Department of Natural Resources forester assigned to the county after coordination with the county.
- (23) “Forest mitigation bank agreement” means an agreement entered into by an individual owning a forest mitigation bank and the Planning Board, which commits the banker to certain procedures and requirements when creating and operating a forest bank.
- (24) “Forest mitigation bank plan” means a plan for approval of a forest mitigation bank submitted to the Planning Director by an individual proposing to establish a forest mitigation bank.
- (25) “Forest stand delineation” means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activity.
- (26) “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 1st and ending on October 31st.
- (27) “Intermittent stream” means a stream defined as intermittent in the latest version of Environmental Management of Development in Montgomery County, Maryland (MNCPPC).
- (28) “Landscaping plan” means a plan drawn to scale and made part of the approved forest conservation plan, showing dimensions and details for tree planting and large landscaped areas that will be applied as credit toward a site’s reforestation or afforestation requirements. Use of native or indigenous plants is required, when appropriate.
- (29) “Limits of disturbance” means a clearly designated area within which land disturbance is slated to occur.
- (30) “Maintenance agreement” means the short-term management agreement associated with afforestation or reforestation plans.
- (31) “Native” means a plant or animal species whose geographic range during precolonial times included the Piedmont of Maryland. Information of native plants can be found in Woody Plants of Maryland (Brown and Brown, 1972) and Herbaceous Plants of Maryland (Brown and Brown, 1984), as well as other literature sources.
- (32) “Natural regeneration” means establishment of trees and other vegetation with at least 400 woody, free-to-grow tree seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

(33) “Natural resources inventory” means the collection and presentation of environmental information for a property according to the guidelines specified in these regulations and in the latest version of Environmental Management of Development in Montgomery County, Maryland (MNCPPC) and the Trees Technical Manual (MNCPPC).

(34) “Offsite” means outside the limits of the areas encompassed by a tract.

(35) “Onsite” means within the limits of an area encompassed by a tract.

(36) “Perennial stream” means a stream defined as perennial in the latest version of Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

(37) “Planting plan” means a plan showing how areas to be reforested or afforested will be planted.

(38) “Priority areas” means forest areas that are ranked as the highest priority for retention as part of a forest conservation plan.

(39) “Qualified professional” means a licensed forester, licensed landscape architect, or other qualified professional approved by the State.

(40) “Regulated activity” means any of the following activities:

- (a) Subdivision;
- (b) Grading;
- (c) Forest clearing;
- (d) An activity that requires a sediment control permit; or
- (e) Project plan of a federal, state, or local agency.

(41) “Retention area” means forested areas, tree stands and individual trees that will be retained on a site.

(42) “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.

(43) “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.

(44) “Stream buffer” means a strip of natural vegetation 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 Environmental Management of Development in Montgomery County, Maryland (MNCPPC).

(45) “Subdivision” means the definition of subdivision in Section 50-1 of the Montgomery County Code.

(46) “Tract” means:

- (a) The property subject to a development application or a sediment control permit, the boundaries of which are described by deed or record plat;
- (b) The entire property subject to a planned unit development if a development application or a sediment control permit is included in a planned unit development; or
- (c) The length and width of the right-of-way or the limits of disturbance, whichever is greater, for a linear project.

(47) “Tree save area” means an area designating trees, or stands of trees outside existing forest cover which are to be retained.

(48) “Tree save plan” means a plan approved by the Planning Board under Chapter 22A or Chapter 50 of the County Code which covers individual trees or stands of trees to be saved as part of, or instead of a forest conservation plan.

### **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 for a regulated activity:

- (1) A development plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code;
- (2) A project plan approved or amended under Division 59-D-1 of Chapter 59 of the County Code;
- (3) A preliminary plan of subdivision approved by the Planning Board under Chapter 50 of the County Code;
- (4) A Division 59-D-3 site plan;
- (5) A sediment control permit required under Chapter 19 of the County Code;
- (6) A special exception approved under Article 59-G of Chapter 59 of the County Code;
- (7) A mandatory referral; and
- (8) 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 includes a forest stand delineation, as described in Section 106 and in the latest versions of Environmental Management of Development in Montgomery County (MNCPPC) and the Trees Technical Manual, 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 106 and 107, and the criteria for area to be cleared in the Trees Technical Manual.
- (3) Preparation by a qualified professional, of a forest conservation plan to be approved by the Planning Board or Planning Director, as applicable, which includes:
  - (a) lot lines, building, and proposed infrastructure, located to maximize retention areas;
  - (b) afforestation and reforestation areas and planting plan, as required;
  - (c) appropriate protection and maintenance measures; and
  - (d) a timetable for construction and planting.

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

A. An application must be considered complete if it contains all the following information:

- (1) A complete analysis of existing natural resources, or natural resources inventory 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 lots, whichever is less:
  - (a) property boundaries;

- (b) 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);
- (c) slopes 25% and greater, and slopes between 15% and 25% that are associated with erodible soils;
- (d) perennial and intermittent streams and stream buffers per the latest version of the guidelines in Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
- (e) one-hundred year floodplains and associated 25' building restriction lines;
- (f) wetlands and their buffers per the latest version of the guidelines in Environmental Management of Development in Montgomery County, Maryland (MNCPPC);
- (g) soils and geologic conditions including, soil type, structural limitations, soils that are hydric or have hydric inclusions, and erodible soils on slopes of 15% or more;
- (h) rare, threatened or endangered plants or animals observed in the field;
- (i) critical habitat areas observed or documented by the MD Dept. of Natural Resources;
- (j) aerial extent of forest and tree cover which includes the outside perimeter of the canopy of individual trees;
- (k) cultural features and historic sites;
- (l) a site vicinity map at 1" = 2000' which shows the location of the site within a square mile and indicates major roads; and
- (m) a table containing acreage of wetlands, 100-year floodplains, and stream buffers.

(2) 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 lots, whichever is less:

- (a) forest stands and field verified boundaries;
- (b) a description of each stand including:
  - (i) acreage;
  - (ii) dominant and codominant tree species;
  - (iii) size class by species;
  - (iv) percent canopy closure;
  - (v) number of canopy layers (vertical structure);
  - (vi) percent of forest floor covered by herbaceous plants (native species), downed woody material, and alien or invasive species; and
  - (vii) a stand condition narrative for each stand including, information on condition classes, structure, function, retention potential, transplant and regenerative potential, and comments on evidence of past management; and
- (c) specimen trees by size and species;
- (d) 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;
- (e) individual trees in good health that have a diameter at 4.5 feet above the ground (DBH) of 24" or greater by size and species;
- (f) field survey reference points; and
- (g) a table containing acreage of forest within existing wetlands, 100-year floodplains, and stream buffers;

(3) 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.

(4) A completed NRI/FSD application form, fee schedule worksheet and review fee.



B. A simplified forest stand delineation may be used per subsection 22A-10(b)(2) of the Forest Conservation Law. The simplified plan must include:

- (1) A natural resources inventory as described in subsection A(1);
- (2) Forest stands as determined by dominant species types and priority for retention;
- (3) Stand condition narrative as described in subsection A(2)(b)(vii);
- (4) A proposed limit of disturbance line; and
- (5) Proposed areas of long-term protection.

C. A natural resources inventory and forest stand delineation must be prepared by a licensed forester, licensed landscape architect, or qualified professional as specified in COMAR 08.19.06.01A; and must exhibit a stamp or certification of the preparer.

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

A. The following trees, shrubs, plants, and specific areas are considered the highest priority for retention and 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 intermittent and perennial streams and their buffers, slopes over 25 percent (not man-made), nontidal wetland and their buffers, erodible soils on slopes of 15% or more, 100-year floodplains, 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) 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;
  - (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
- (4) an individual tree, and its critical root zone, with one or more of the following characteristics:
  - (a) a tree that is part of a historic site or associated with a historic structure;
  - (b) a tree designated as a national, state, or local 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 champion tree; and
  - (d) a tree which is a specimen of a species.

B. The following areas are not subject to the retention provisions 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 a corridor 300 feet wide 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 dwellings and roads;
- (4) A forest stand, or portions of a stand, with good forest structural diversity; and
- (5) An individual tree with a diameter, measured at 4.5 feet above the ground, of 24" 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 retaining existing forest on the site. The forest conservation law specifies percentages of all forested sites which, at a minimum, should be preserved. Applicants should strive to reach the break-even point on forested sites so that no replanting is required.

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 priority forests and priority areas specified in Section 22A.00.01.07 are not being retained;
- (3) If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with subsection 22A-12(e)(1)(A) of the Forest Conservation Law;
- (4) Where on the site in priority 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. Nontidal 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 subject 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, but the area must be subtracted on an acre for acre basis from the total amount of forest to be cut or cleared, and the reforestation requirements of this subtitle must be calculated using the reduced acreage; and
- (4) Nontidal wetlands must be considered to be priority areas for forest retention and replacement.

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(4) must 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 protected.
- (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 high priority for required afforestation and reforestation:

- (a) establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
  - (b) establish or enhance forested areas on 100-year floodplains, when appropriate;
  - (c) 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;
  - (d) establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - (e) 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;
  - (f) establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility right-of-ways; and
  - (g) establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, 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 (at the end of the 2 <sup>nd</sup> growing season) (3)
<b>TREES:</b>			
Whips; 3'-4' height, container grown (minimum 2 gal.)	350	10' to 12'	75% or 260 per acre
¾" to 1" caliper; B&B or container grown (minimum 5 gal.)	200	12' to 15'	75% or 150 per acre (4)
1 ½" to 2" caliper; B&B or container grown (minimum 15 gal.)	100	15' to 20'	100% or 100 per acre (5)
<b>SHRUBS:</b>			
18" to 24" height; container grown	33	(6)	

**Notes:**

(1) In certain circumstances, any combination of the above mentioned stocking options; or variation of these options in combination with container grown seedlings and/or natural regeneration 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 Director.

(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 tree survival at the end of the two-year 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 up to another two years will be required in addition to reinforcement planting. Natural regeneration may be counted toward survival requirements on a case-by-case basis as determined by the Planning Director.

(4) Surviving trees must be at least 1" caliper to receive full credit toward survival requirements. Reinforcement planting must be 1" trees.

(5) Surviving trees must be at least 2" caliper to receive full credit toward survival requirements. Reinforcement planting must be 2" trees.

(6) Shrubs should be evenly distributed over the planting area and among the trees.

#### F. Tree Save Plans

(1) Development applications on tracts which include specimen or champion trees may be required to submit a tree save plan.

(2) Preserving 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:

(a) specimen/champion trees must be replaced by a landscaping plan which may be required to include planting or transplanting of large trees;

(b) significant tree stands must be replaced so as to replace the function of the stand; for instance, trees which provide screening must be replaced in sufficient kind and number to perform the same function.

#### 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) Newly planted landscape trees must be 2-3" caliper stock to be counted toward requirements.

(3) 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:

(a) developments in urban areas;

(b) redevelopments;

(c) high-density residential developments;

(d) commercial and industrial developments;

(e) high density mixed-use developments; and

(f) some institutional areas.

(4) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' reforestation requirements as follows:

(a) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide must receive full credit for their area;

(b) landscaping areas and retained tree stands which are less than 2,500 square feet in size or 35 feet wide must receive one quarter credit for their area;

(c) individual landscape trees must receive one quarter credit for the projected area of their canopy at 20-years;

(d) individual non-priority trees which are retained must receive one quarter credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected; and

- (e) the total credit from these areas must not exceed twenty percent of the overall reforestation requirement for a site.
- (5) Landscaping, retention of tree stands, and retention of individual trees may be credited toward a sites' afforestation requirements as follows:
  - (a) sites with tree cover requirements per subsection (3):
    - (i) landscaping areas or retained tree stands of any size must receive full credit for their area;
    - (ii) individual landscape trees must receive full credit for the projected area of canopy at 20-years; and
    - (iii) individual trees which are retained must receive full credit for the protected area of their critical root zone when at least two thirds of the entire critical root zone is protected;
  - (b) sites with forest cover requirements:
    - (i) landscaping areas or retained tree stands which are at least 2,500 square feet in size and 35 feet wide must receive full credit for their area;
    - (ii) landscaping areas and retained tree stands which are less than 2,500 square feet in size or less than 35 feet wide must receive one quarter credit for their area;
    - (iii) individual non-priority landscape trees must receive one quarter credit for the projected area of their canopy at 20-years;
    - (iv) individual trees which are retained must receive one quarter credit for the protected area of their critical root zone when at least two thirds 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.

## **22A.00.01.09 Forest Conservation Plan Requirements**

### **A. Preliminary Forest Conservation Plans**

- (1) Development applications that need more than one approval may submit a preliminary forest conservation plan in conjunction with the first approval. The 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 dimensions of lots, showing locations of any existing structures and improvements, including paved areas;
  - (b) locations and dimensions of all existing and proposed rights-of-way, setbacks, easements, stockpile areas, and stormwater management facilities (road and utility rights-of-way which will not be improved as part of the development application must be identified);
  - (c) location of building restriction lines and areas to be conserved including floodplains, wetlands and stream 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, 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 total forest retention;
  - (vi) acreage of total forest cleared;
  - (vii) land use category and conservation and afforestation thresholds from subsection 22A-12(a) of the Forest Conservation Law;
  - (viii) acreage of forest retained, cleared, and planted within wetlands;
  - (ix) acreage of forest retained, cleared, and planted within 100-year floodplains;
  - (x) acreage of forest retained, cleared, and planted within stream buffers;
  - (xi) total acreage of forest retained, cleared, and planted within priority areas; and
  - (xii) linear feet and 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 and must be submitted in conjunction with the final approval needed as part of a development application.

(2) In addition to the items listed in subsection A(2)(a-c), (f), (g) and (h) updating by final grading, a final forest conservation plan must include:

- (a) final grading plans which include building locations and footprints, retaining walls, road and parking layout, sidewalks and pathways, and location of recreation facilities;
- (b) a limit of disturbance line which reflects the limits of all clearing and grading on the tract, and the location of sediment and erosion control devices;
- (c) a survey of trees 24 inches and greater diameter at 4.5 feet above the ground for 50' on either side of the limit of disturbance, and delineation of their critical root zones (survey of other trees may be required when necessary to determine the feasibility of proposed retention areas);
- (d) retention areas including forest, tree stands and other individual trees to be saved, including acreage;
- (e) an afforestation and/or reforestation planting plan, if required, which contains:
  - (i) location and acreage of areas to be planted;
  - (ii) an analysis of the suitability of the site for planting and a description of necessary methods;
  - (iii) a list of target tree and shrub species, chosen based on analysis of site conditions, which can be used for site planting;
  - (iv) a plant materials table including size of plants to be installed and quantities;
  - (v) planting and inspection schedule which is tied to the construction sequence for the project;
  - (vi) a maintenance plan which includes provisions for necessary watering, control of competing vegetation, protection from disease, pests, and mechanical injury, and reinforcement planting if plant survival falls below the requirements of Subsection 22A.00.01.08E(3)(c);
  - (vii) calculation for financial security which is to be provided in an amount equal to the estimated cost of the required planting and maintenance, or equal to the fee in lieu for the area to be planted; and
  - (viii) a maintenance and monitoring agreement; and
- (f) off-site planting, if required, which includes 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).
- (g) permanent protection area boundaries and long-term protection agreement, where appropriate, and building restrictions lines;

(h) a protection plan which shows:

- (i) location of temporary and permanent protection devices, as appropriate, 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 devices;
- (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; and
- (vi) calculation of the fee in lieu of reforestation or afforestation, if appropriate.

### **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 provisions of the forest conservation plan;
- (4) Before the start of any required reforestation and afforestation 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 specifications);
- (5) After required reforestation and afforestation planting has been completed to verify that the planting is acceptable and begin the 2-year maintenance period; and
- (6) At the end of the 2-year maintenance agreement to determine the level of compliance with the provisions of the planting plan and, if appropriate, authorize release of the financial security.

B. These inspections must be requested by the applicant at the designated points.

### **22A.00.01.11 Exemptions**

A. A request for exemption from forest conservation requirements per Sections 22A-5, 22A-6, and 22A-7 of the Forest Conservation Law must be made 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 prepared per Section 22A.00.01.06A(1) and the guidelines in the latest version of 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 a site plan which shows existing and proposed topography and forest boundaries is submitted with the exemption request; and
- (2) Applications for other exemptions, if the site being developed does not contain any forest or natural features, and a plan showing existing features and topography is submitted with the exemption request.

D. The Planning Board 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) Meet the requirements in this subtitle 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
- (4) File an exemption with the Planning Board.

E. 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 knowing violation of this subtitle.

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

A. A declaration of intent is an affirmation by an applicant that property is subject to the following activities and limitations and therefore is eligible for an exemption from the Forest Conservation Law;

- (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 does not result in the cumulative cutting, clearing or grading of more than 40,000 square feet of forest, and complies with the other requirements of subsection 22A-5(a) of the Forest Conservation Law;
- (2) A real estate transfer subject to subsection 22A-5(m) of the Forest Conservation Law.

B. The declaration must provide Park and Planning Department staff with access to the property to verify compliance with the declaration.

C. The declaration of intent is effective for 5 years after the date the Director approves the exemption.

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; and
- (2) The Board may take other enforcement actions under

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 this subtitle are satisfied.



G. Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of intent may be required as part of a sediment and erosion control plan which ensures that the activity meets the exemption conditions in subsection 22A-5(b) and (d) of the Forest Conservation Law.

### **22A.00.01.13 Amendment to Forest Conservation Plan and Declaration of Intent**

#### **A. Forest Conservation Plan.**

(1) Minor amendments which do not result in more than a total of 5000 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 entail more than a total of 5000 square feet of additional forest clearing must be approved by the Planning Board or Planning Director (depending on who approved the original plan). Notice of each major plan amendment and opportunity for comment must be given to adjacent property owners as part of the Planning Board or Planning Director approval process.

#### **B. Declaration of Intent.**

(1) A request to amend a declaration of intent 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 2 years.

(2) The agreement must be submitted and approved by the Planning Director before the start of the 2-year maintenance period.

(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 person required to conduct the afforestation or reforestation, after this referred to as the “obligee,” must present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:

(a) an executed deed conveying title to a selected site to the obligee;

(b) an executed conservation easement agreement;

(c) written evidence of the landowner’s consent to the use of a selected site;

(d) a fully executed option agreement, long-term lease agreement, or contract of sale for a selected site; or

(e) other written evidence of a possessory or ownership interest in a selected site.

(5) The Planning Board must be a signatory to the maintenance agreement, or must be designated a third-party beneficiary of the agreement.

(6) The Planning Board must not release required financial security or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.

(7) The maintenance agreement must provide Park and Planning Department staff with access to the property to verify compliance with the afforestation or reforestation planting plan.

#### B. Bonding.

(1) Financial security must be provided per subsection 22A-12(i) of the Forest Conservation Law.

(2) The full amount must be provided before authorization is granted to begin clearing and grading activities.

(3) The value of the financial security may be reduced after it is submitted if the obligee proves to the satisfaction of the Planning Director that the costs to complete the mitigation project have been reduced.

(4) The Planning Director must determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation by considering the following:

- (a) the size of the afforestation or reforestation area;
- (b) the method of afforestation or reforestation used;
- (c) plant survival and overall plant health within the planting areas;
- (d) the cost of planting or replacement materials;
- (e) the project's maintenance costs; and
- (f) other relevant factors.

(5) The financial security must be in force until all measures for reforestation, afforestation, and maintenance requirements have been met to the satisfaction of the Planning Director, or until the in lieu fees have been paid.

(6) 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 Board 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.

(7) Release of part or all of the financial security may be authorized by the Planning Department enforcement and monitoring staff after planting has been done.

(8) An applicant must request an inspection of the planted areas by Planning Department enforcement and monitoring staff immediately after planting is complete.

(9) Planning Department enforcement and monitoring staff must determine whether release should occur, and how much, based on the following factors:

- (a) adherence to the planting plan;
- (b) condition of the planted material;
- (c) size of planting stock; and
- (d) provisions of the protection and maintenance plan.

(10) Planning staff may release the financial security if the applicant requests an inspection and the Planning staff determine that survival requirements have been met.

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

A. 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 under this subtitle and limit the uses of forest to those which are consistent with forest conservation.

(1) Long-term protective measures may include, but are not limited to:

- (a) Covenants running with the land;
- (b) Deed restrictions;
- (c) Conservation easements; and

(d) Land trusts.

(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.

B. An applicant may include in a forest conservation plan another long-term protective measure if the Planning Board or Planning Director finds that the measure will provide for the long-term protection of the areas retained, afforested, or reforested under this subtitle.

The Technical Manual for Trees 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. (Administrative History: Reg. No. 18-01AM (Method 2); Orig. Dept.: Planning Board)

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