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Article I. General.

Sec. 22A-1. Short title.

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

Sec. 22A-2. Findings and purpose.

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

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

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

(2) establish procedures, standards, and requirements to minimize tree loss as a result of development and to protect trees and forests during and after

construction or other land disturbing activities;

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

(4) establish a fund for future tree conservation projects, including afforestation and reforestation; and

(5) provide a focused and coordinated approach for County forest conservation activities. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-3. Definitions.

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

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

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

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

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

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

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

- (1) is for purposes exempted under this Chapter; and
- (2) will not circumvent the requirements of this Chapter.

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

Development project completion means the date or event identified in the

forest conservation plan agreement, but no later than the date on which the first use-and-occupancy permit is issued for the development (or activity) subject to the preliminary plan of subdivision or sediment control permit or, if a use-and-occupancy permit is not required, the date on which the final building inspection or sediment control inspection (for activities not involving building) is conducted by the Department of Permitting Services. A staged development may have more than one completion date.

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

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

Floodplain (100-year) means an 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 a 100-year flood.

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

- (1) areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground; and
- (2) forest areas that have been cut but not cleared.

Forest does not include an orchard.

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

Forest conservation fund means a special fund maintained by the County to be used for purposes specified in Section 22A-27.

Forest conservation plan means a plan approved under Article II.

Forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for every one acre removed to a ratio of 2 acres planted for every one acre removed.

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

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

Forest stand delineation means the evaluation of existing vegetation in relation to the natural resources on a site proposed for development or land disturbing activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

Person means:

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

Planned unit development means a development comprised of a combination of land uses or varying intensities of the same land use, having at least 20 percent of the land permanently dedicated to open space, and in accordance with an integrated plan that provides flexibility in land use design approved by the District Council under Division 59-D-1 or by the Planning Board under Division 59-D-2 of Chapter 59.

Planning Board means the County Planning Board of the Maryland-National Capital Park and Planning Commission.

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

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

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

Public utility means:

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

Reforestation or reforested means the creation 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 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2 inch or greater diameter measured at 4.5 feet above the ground within 7 years. *Reforestation* for a linear project which involves overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

Retention means the deliberate holding and protecting of existing trees and other plants on the site.

Sediment control permit means a permit required to be obtained for certain land disturbing activities:

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

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

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

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

Technical Manual means a detailed guidance document used for administration of this Chapter that is adopted by the Planning Board under Section 22A-26.

Timber harvesting means a tree cutting operation affecting one or more acres of forest or developed woodland within a one year period that disturbs 5,000 square feet or more of forest floor. Timber harvesting does not include grubbing

and clearing of root mass.

Tract means the property subject to a development application or a sediment control permit, as described by deed or record plat.

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

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

Tree save plan means a plan prepared in conjunction with a development application indicating where trees are to be retained or planted, including the establishment of conservation areas.

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

Watershed means all lands lying within an area described as a watershed in the Countywide Stream Protection Strategy. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch 19, § 1; 2002 L.M.C., ch. 16, § 2; 2004 L.M.C., ch. 20, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-4. Applicability.

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

- (a) a person required by law to obtain development plan approval, diagrammatic plan approval, project plan approval, preliminary plan of subdivision approval, or site plan approval;
- (b) a person required by law to obtain special exception approval or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a);

- (c) a government entity subject to mandatory referral on a tract of land 40,000 square feet or larger which is not exempt under subsection 22A-5(f);
- (d) highway construction not exempt under subsections 22A-5(e) or (p); and
- (e) a public utility not exempt under subsections 22A-5(g), (o)(1) and (2), or (p).

Any person who expects to cut, clear, or grade more than 5000 square feet of forest, and who believes that the cutting, clearing, or grading is exempt under Section 22A-5, 22A-6, 22A-7, or 22A-8, must notify the Planning Director in writing before performing any cutting, clearing, or grading and seek confirmation from the Director that the cutting, clearing, or grading is in fact exempt from Article II. Failing to notify the Director as required by this Section or performing any cutting, clearing, or grading before the Director confirms that an exemption applies, is a violation of this Chapter. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-5. Exemptions.

The requirements of Article II do not apply to:

- (a) an activity conducted on an existing single lot of any size that is required to construct a dwelling house or accessory structure (such as a pool, tennis court, or shed) intended for the use of the owner, if the activity:
 - (1) does not require a special exception;
 - (2) does not result in the cutting, clearing, or grading of:
 - (A) more than a total of 40,000 square feet of forest;
 - (B) any forest in a stream buffer,
 - (C) any forest on property located in a special protection area which must submit a water quality plan,

(D) any specimen or champion tree, or

(E) any trees or forest that are subject to a previously approved forest conservation plan or tree save plan; and

(3) is subject to a declaration of intent filed with the Planning Director stating that the lot will not be the subject of additional regulated activities under this Chapter within 5 years of the cutting, clearing, or grading of forest;

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

(c) a tree nursery;

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

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

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

(C) has received a sediment control permit from the Department of Permitting Services and posted the required financial security under Chapter 19

(2) The Department of Permitting Services must send the Planning Director a copy of all sediment control permits issued for commercial logging and timber harvesting operations.

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

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

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

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

- (h) utility or other work that is of an emergency nature;
- (i) noncoal surface mining regulated under Title 7 of the Natural Resource Article of the Maryland Code;
- (j) a sediment control permit approved before July 1, 1991, or if amended after that date at the initiation of the permittee, that does not result in the cutting of more than 5,000 additional square feet of forest;
- (k) any lot covered by a preliminary plan of subdivision or site plan that does not receive a sediment control permit before July 1, 1991, and for which the preliminary plan of subdivision or site plan:
 - (1) was approved before July 1, 1984, and has less than 40,000 square feet of forest cover; or
 - (2) was approved or extended between July 1, 1984 and July 1, 1991, and
 - (3) the construction will not result in the cutting, clearing, or grading of
 - (A) any forest in a stream buffer, or
 - (B) any forest on property located in a special protection area which must submit a water quality plan.

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

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

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

(1) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and

(2) both the grantor and grantee file a declaration of intent;

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

(1) the only development located on the resulting lot is a single family dwelling unit or an accessory structure (such as a pool, tennis court, or shed); ar

(2) development does not result in the cutting, clearing, or grading of:

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

(B) any forest in a stream buffer,

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

(D) any specimen or champion tree, or

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

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

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

(2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest.

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

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

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

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

(A) any forest in a stream buffer,

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

- (C) any specimen or champion tree, or
- (D) any tree or forest that is subject to a previously approved forest conservation or tree save plan;

(q) a special exception application if:

(1) the application is for an existing structure and the proposed use will not result in clearing of existing forest or trees;

(2) the application modifies an existing special exception use which was approved before July 1, 1991, and the revision will not result in the clearing of more than a total of 5000 additional square feet of forest or any specimen or champion tree; or

(3) the total disturbance area for the proposed special exception use will not exceed 10,000 square feet, and clearing will not exceed a total of 5000 square feet of forest or include any specimen or champion tree;

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

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

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

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

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

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

(s) (1) an activity occurring on a tract of land less than 1.5 acres with no

existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet; or

(2) an activity occurring on a tract less than 1 acre that will not result in the clearing of more than a total of 30,000 square feet of existing forest, or any existing specimen or champion tree, and reforestation requirements would not exceed 10,000 square feet. Forest in any priority area on-site must be preserved and

(t) a modification to existing developed property if:

(1) no more than 5000 square feet of forest will be cleared;

(2) the modification does not affect any forest in a stream buffer or located on property in a special protection area which must submit a water quality plan; and

(3) the modification does not require approval of a new subdivision plan. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1; ; 2002 L.M.C., ch. 16, § 1; 2004 L.M.C., ch. 20, §1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-6. Exemptions-Special provisions.

(a) Special transition provision. An activity or development that is exempted under Section 22A-5, but which requires site plan approval, is subject to the local law applicable to tree conservation in effect before July 1, 1992. However, a violation of the requirements of any tree save plan or similar condition of approval may be enforced using any remedy provided under this Chapter.

(b) Tree save plan provision. An activity or development that would be exempt under Section 22A-5, except that the proposed activity involves clearing of a specimen or champion tree, requires the approval of a tree save plan, which may require tree preservation or mitigation for loss of individual trees. The plan requirements must be based on the size and character of the trees to be cleared. If trees to be cleared are part of an existing scenic buffer between public parkland and a proposed development, trees which are smaller than specimen

size may be included in the plan. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

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

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

(1) final plat approval has been obtained by July 1, 1992; or

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

(A) any required approval or permit that has not been obtained from another governmental agency is not available solely because of the inaction by the other governmental agency; and

(B) the applicant has used best efforts to obtain the permit or approval.

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

(c) If the Planning Board finds that a development approval between July 1, 1991 and July 1, 1992 was consistent with the retention, afforestation, or reforestation standards of this Chapter but is not exempt under this Section, the Board may waive additional submission requirements at the time of any later sediment control permit application. However, the Board must not waive the provisions of Section 22A-12(g) and (h) requiring certain agreements and financial security.

(d) An amendment to a sediment control permit approved between July 1, 1991 and July 1, 1992 is subject to the requirements of Article II if the activity is not otherwise exempt and it will result in the cutting of an additional 5,000 square feet of forest. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

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(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-8. Utility lines.

(a) *General.*

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

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

(b) *Calculation Rules; Exemption.*

(1) To determine the applicability of this Chapter under Section 22A-4 to proposed activities within a public right-of-way or public utility easement, the calculation of land area must be based on the limits of disturbance as shown on the sediment control permit.

(2) A public right-of-way, public utility easement, or privately owned utility right-of-way is considered to be exempt under Section 22A-5(o) if the proposed activity and any future stages of the work on the utility line will not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest or the cutting, clearing, or grading of any specimen or champion tree, or trees or forest that are subject to a previously approved forest conservation or tree save plan. Any later stages of the work must be identified at the time of the initial sediment control permit application.

(3) If the exemption does not apply, afforestation or reforestation requirements must be calculated using the net tract area applicable to the entire

proposed utility line without regard to project segments subject to a specific sediment control permit. The property boundaries of the privately owned utility right-of-way, public utility easement, or public right-of-way (to the extent of the utility work) must be used in calculating the area of the tract. The net tract area should reflect any reduction in land area that will continue to be used for agricultural activities.

Any requirement for mitigation for loss of any specimen or champion tree must be based on the size and character of the tree. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-9. County Highway Projects.

(a) *General.*

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

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

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

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

(d) Any mitigation requirement for loss of specimen or champion trees must be based on the size and character of the tree. (2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Article II. Forest Stand Delineations and Forest Conservation Plans.

Sec. 22A-10. General.

(a) *Approval required.* A person who is subject to this Article must submit a forest stand delineation and forest conservation plan for regulatory approval.

(b) *Forest stand delineation.*

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

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

(A) there is no forest on the site;

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

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

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

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

(A) a forest conservation plan has been accepted as complete; or

(B) the delineation has been recertified by the preparer.

(c) *Forest conservation plan.*

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

(2) A forest conservation plan may include protective measures designed to conserve significant and mature trees on adjacent property from adverse impacts that may be caused by the development or land disturbing activities proposed for the tract.

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

(d) *Qualifications of preparer.* The forest stand delineation and forest conservation plan must be prepared by a licensed forester, licensed landscape architect or other qualified professional approved by the Planning Director. In determining if a person is qualified, the person must meet all applicable requirements under the Code of Maryland Regulations, 08.19.06.01. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

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

(a) General.

(1) Coordinated with project review. The forest stand delineation and forest conservation plan must be submitted and reviewed in conjunction with the review process for a development plan, project plan, preliminary plan of subdivision, site plan, special exception, mandatory referral, or sediment control permit in accordance with this Section. The Planning Director must coordinate review of the forest conservation plan with the Director of Environmental Protection, the Director of Permitting Services, the Washington Suburban Sanitary Commission, other relevant regulatory agencies, and entities that will provide public utilities to the tract, to promote consistency between the

objectives of this Chapter and other development requirements. To the extent practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimize tree loss.

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

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

(B) each modification is minor and does not impact any forest in a priority area (such as substituting an on-site conservation area for an equal or greater on-site area of similar character, or substituting a marginal on-site conservation area for equal or greater amount of off-site priority area); or

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

Any other modification must be approved by the agency that approved the forest conservation plan.

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

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

(2) Forest conservation plan.

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

(B) Review. Within 45 days from receipt of a final forest conservation plan, including a plan that is not reviewed in 2 stages, the Planning

Director must notify the applicant whether the forest conservation plan is complete and approved for submission to the Planning Board as part of the development application. If the applicant is not notified within 45 days, the plan will be treated as complete and approved for submission. The Planning Director may require further information or provide for one extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.

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

(c) *Project requiring special exception approval.*

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

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

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

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

(2) Forest conservation plan. Upon notification that the forest stand delineation is complete and correct, the applicant must submit to the Planning Director a forest conservation plan. Within 45 days from receipt of the forest

conservation plan, the Planning Director must notify the applicant if the forest conservation plan is complete and approved. If the applicant is not notified within 45 days, the plan will be treated as complete and approved. The Director may require further information or provide for an extension of this deadline for an additional 15 days for extenuating circumstances. In addition, at the request of the applicant, the Director may extend this deadline for extenuating circumstances.

(3) Issuance of sediment control permit. A sediment control permit must not be issued to a person who must comply with this Article until:

(A) a final forest conservation plan, if required, is approved; and

(B) any financial security instrument required under this Chapter is provided.

(e) *Project requiring mandatory referral.*

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

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

(3) Issuance of a sediment control permit. Issuance of a sediment control permit is subject to the conditions specified in paragraph (d)(3) of this Section. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1; 2002 L.M.C., ch. 16, § 2.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-12. Retention, afforestation, and reforestation requirements.

(a) *Table.*

***Forest Conservation Threshold and Required
Afforestation as a Percentage of Net Tract Area***

<i>Land Use Category¹</i>	<i>Forest Conservation Threshold</i>	<i>Required Afforestation</i>
Agricultural and resource areas	50%	20%
Medium-density residential areas	25%	20%
Institutional development areas	20%	15%
High-density residential areas	20%	15%
Mixed-use development areas	15-20%* ²	15%
Planned unit development areas	15-20%* ²	15%
Commercial and industrial use areas	15%	15%

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

² The residential and institutional portions of the tract must meet the 20% requirement. If a planned unit development was initially approved before January 1, 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the total acreage subject to the planned unit development that has received site plan approval), the forest conservation threshold is calculated at 15 per cent. If the planned unit development is less than 25% complete, the forest conservation threshold is calculated using the adjustment shown in the chart.

(b) *Retention.*

(1) The primary objective of the forest conservation plan should be to retain existing forest and trees and avoid reforestation in accordance with this Chapter. The forest conservation plan must retain certain vegetation and specific areas in an undisturbed condition unless the Planning Director finds that:

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

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

(C) the development proposal cannot be reasonably altered.

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

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

(B) contiguous forests;

- (C) rare, threatened, and endangered species;
- (D) trees connected to an historic site;
- (E) exceptionally large trees; and
- (F) areas designated as priority save areas in a master plan or functional plan.

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

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

(2) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of ¼ acre planted for every one acre removed.

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

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

(d) *Afforestation.*

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

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

(e) *Standards for reforestation and afforestation.*

(1) (A) Preferred sequence. Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation is, in general: enhancement of existing forest through on-site selective clearing, supplemental planting, or both; on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible; landscaping with an approved plan; and off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible.

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

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

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

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

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

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

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

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

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

(3) Priority areas and plantings. Afforestation and reforestation should be directed to stream buffer areas, connections between and additions to forested areas, critical habitat areas, topographically unstable areas, and land use and road buffers. The use of native plant materials is preferred. Unless the Planning Board or Planning Director order otherwise, the required use of natural regeneration

under this Chapter supercedes any prohibition under Chapter 58.

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

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

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

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

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

(2) Retention, reforestation and afforestation. Forest retention should be maximized where possible on each site listed in this subsection. At a minimum on-site forest retention, and in some cases reforestation and afforestation, must be required as follows:

(A) In an agricultural and resource area, on-site forest retention must equal 25% of the net tract area.

(B) In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a). This requirement also applies to any site seeking a waiver or variance from base zone standards under Section 59-C-1.393(b), 59-C-1.395, 59-C-1.532, 59-C-1.621, or 59-C-7.131, if as a condition of the waiver or variance the Planning Board or County Council must find that the resulting development is environmentally more desirable.

(C) On a site covered by this subsection, if existing forest is less than

the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.

(D) If a site covered by this subsection is unforested, on-site afforestation must equal the applicable afforestation threshold.

(3) If the Planning Board or Planning Director, as appropriate, finds the forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.

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

(g) *In lieu fee.*

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

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

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

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

(C) Afforestation on sites with no priority planting areas. If a site has afforestation planting requirements and the Planning Board or Planning Director, as appropriate, finds that no on-site priority planting area is present and no other appropriate on-site planting area is available, the applicant may pay the fee instead of doing off-site afforestation.

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

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

(h) *Agreements.*

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

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

(i) *Financial Security.*

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

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

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

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

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

(4) Amount required.

(A) If the financial security is required under subparagraph (1)(A) o

this subsection, the security instrument must be in an amount equal to the estimated cost of afforestation, reforestation, and maintenance applicable to the section of the tract subject to the land disturbing activity. The instrument must include a provision for adjusting the amount based on actual costs. The Planning Director must notify the obligee of any proposed adjustment and provide the opportunity for an informal conference.

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

(5) Release. The financial security instrument must be in effect until all requirements have been fulfilled to the satisfaction of the Planning Director. The instrument may provide for the partial release or return of the instrument based on successful implementation of phases of the forest conservation plan.

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

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

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

(7) Forfeiture proceedings.

(A) The Planning Director must notify the obligee, by certified mail of the intention of the Commission to initiate forfeiture proceedings.

(B) The obligee has 30 days from the receipt of the notice of forfeiture to show cause why the financial security should not be forfeited.

(C) If the obligee fails to show cause, the financial security instrument must be forfeited.

(8) Exception. This subsection does not apply to governmental entities. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory

referral review before this Act took effect [November 5, 2001].

Secs. 22A-13. Forest mitigation banks.

(a) A person may create a forest mitigation bank from which applicants may buy credits by afforesting or reforesting an area of land under a forest mitigation bank plan approved by the Planning Director.

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

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

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

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

(2) all information required by subsection 22A-10(c) for a forest conservation plan; and

(3) the draft easement, covenants, or deed restrictions for the area to be sold to the developer when credits are withdrawn from the bank.

(e) Forest mitigation banks must be established in priority areas described in subsection 22A-12(e)(3), or in areas identified in a master plan or functional plan.

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

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

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital

Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

22A-14. Reserved.

Article III. Enforcement, Appeals, and Variances.

Sec. 22A-15. Inspections and notification.

(a) *Permission to gain access.* Authorized representatives of the Planning Department may enter properties subject to this Chapter for the purpose of inspection and enforcement.

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

(c) *Required inspections.* The Planning Department should conduct at least 3 field inspections of a tract subject to an approved forest conservation plan. The inspections should take place as follows:

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

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

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

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

(e) *Required notifications.*

(1) At least 2 working days before starting any land disturbing activities associated with the forest conservation plan, a person must notify the Planning Department. The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent directives in the field relating to the forest conservation plan and sediment control activities.

(2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the

Department may schedule the second inspection specified under paragraph (c) of this Section. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C. ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2002 L.M.C., ch. 16, § 2.)

Sec. 22A-16. Penalties and other remedies.

(a) *Class A violation.* Violation of this Chapter or any regulations adopted under it is a Class A civil or criminal violation. Notwithstanding Section 1-19, the maximum civil fine is \$1,000. Each day a violation continues is a separate violation under this Chapter.

(b) *Enforcement authority.* The Maryland-National Capital Park and Planning Commission has primary enforcement authority under this Chapter. Administrative enforcement actions are to be initiated by the Planning Director in accordance with this Article.

(c) *Civil and criminal actions.* The Commission may bring any civil or criminal action that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The Commission may also bring a civil action to enforce a forest conservation plan and any associated agreements and restrictions or to enforce an administrative order. These remedies are in addition to any remedy that the Commission or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.

(d) *Administrative civil penalty.*

(1) In addition to other remedies provided under this Article, a person who violates this Chapter, any regulations adopted under it, a forest conservation plan, or any associated agreements or restrictions is liable for an administrative civil penalty imposed by the Planning Board. This civil penalty must not exceed the rate set by the County Council by law or resolution, except as provided in paragraph (3), but must not be less than the amount specified in Section 5-1608 (c) of the Natural Resources Article of the Maryland Code. Each day a violation is not corrected is a separate violation.

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

- (A) the willfulness of the violations;
- (B) the damage or injury to tree resources;
- (C) the cost of corrective action or restoration;
- (D) any adverse impact on water quality;
- (E) the extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and

(F) any economic benefit that accrued to the violator or any other person as a result of the violation;

(G) the violator's ability to pay; and

(H) any other relevant factors.

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

(3) In addition to any amount set under paragraph (1), an administrative civil penalty imposed under this Section may also include an amount that equals the fair market value of any conservation easement needed to enforce any mitigation or restoration requirement under this Chapter in the area of the violation. The Planning Board may specify the acceptable methods of calculating the fair market value of a conservation easement by a regulation adopted under Section 22A-26(a).

(4) The reasons for imposing a civil penalty must be provided in a written opinion of the Planning Board and included in its administrative order.

(e) *Fund.* Money collected under this Section must be deposited into the forest conservation fund. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1, 2005 L.M.C. ch. 32, § 1)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-17. Corrective actions.

(a) *Administrative order.* At any time, including during an enforcement action, the Planning Director may issue an administrative order requiring the violator to take one or more of the following actions within a certain time period:

(1) stop the violation;

(2) stabilize the site to comply with a reforestation plan;

(3) stop all work at the site;

- (4) restore or reforest unlawfully cleared areas;
- (5) submit a forest conservation plan for the property;
- (6) place forested or reforested land under long-term protection by a conservation easement, deed restriction, covenant, or other appropriate legal instrument; or
- (7) submit a written report or plan concerning the violation.

(b) *Effectiveness of order.* An order issued under this Section is effective according to its terms, when it is served. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

(a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001],
or

(b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-18. Plan suspension and revocation.

Grounds for action. After notice to the violator and opportunity for a hearing has been provided under Section 22A-20(d), the Planning Board may suspend or revoke a forest conservation plan if it determines that any of the following has occurred:

- (a) failure of a violator to post or maintain the financial security instrument required under Subsection 22A-12;
- (b) failure to comply with the requirements of an administrative action or order issued under this Chapter;
- (c) misrepresentation in the application process or failure to disclose a relevant or material fact; or
- (d) violation of a requirement of a forest conservation plan or associated legal instrument. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-19. Noncompliance with exemption conditions.

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

- (1) within 5 years, an application for a development or other approval

regulated by this Chapter is submitted for the tract or lot covered by the exemption; or

(2) the person otherwise violates this Chapter or the declaration of inter

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

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

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

(3) both. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-20. Notice, hearings, and appeals.

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

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

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

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

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

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

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

(3) **Appeal.** Upon receipt of the Planning Board's decision, an applicant

has 30 days in which to appeal the decision in accordance with Subtitle B of the Maryland Rules of Procedure.

(d) *Administrative enforcement actions.*

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

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

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

(4) **Appeal.** Upon receipt of the Planning Board's decision, an aggrieved person has 30 days in which to appeal the Board's action in accordance with Subtitle B of the Maryland Rules of Procedure. (1992 L.M.C., ch. 4, § 1)

Sec. 22A-21. Variance provisions.

(a) *Written request.* A person may request in writing a variance from this Chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unwarranted hardship to the person. A request for a variance waives the time requirements in Section 22A-11.

(b) *Application requirements.* An applicant for a variance must:

(1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;

(2) describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;

(3) verify that State water quality standards will not be violated or that measurable degradation in water quality will not occur as a result of the granting of the variance; and

(4) provide any other information appropriate to support the request.

(c) *Referral to other agencies.* Before considering a variance, the Planning

Board must refer a copy of each request to the County Arborist, Planning Department, and other appropriate officials or agencies for a written recommendation before acting on the request. Recommendations must be submitted to the Planning Board within 30 days from the receipt by the official or agency of the request or the recommendation should be presumed to be favorable.

(d) *Minimum criteria.* A variance must not be granted if granting the request:

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

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

(3) arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or

(4) will violate State water quality standards or cause measurable degradation in water quality.

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

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

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

(2) The Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance. (1992 L.M.C., ch. 4, § 1)

Secs. 22A-22--22A-25. Reserved.

Article IV. Administration.

Sec. 22A-26. Regulations.

(a) *Adoption.* The Planning Board must adopt regulations, including necessary procedures, to administer this Chapter. In adopting the regulations, the Board must follow the adoption procedures for a Method (2) regulation under Section 2A-15 and any requirements applicable under State law. However, a

proposed regulation of a procedural nature or that would implement changes in State law or regulation, may be adopted under Method (3) if it is consistent with this Chapter. The regulations must include procedures to amend a forest conservation plan and a declaration of intent.

(b) *Technical manual.* The technical manual must include guidance and methodologies for:

(1) preparing and evaluating a forest stand delineation and natural resource inventory;

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

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

(4) monitoring and enforcement of forest conservation plans; and

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

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

(d) *Administrative fee.* The Planning Board must charge a fee to cover at least partially the costs of administering this Chapter, including review of submittals and field inspections. The fee schedule must be set by the Planning Board as part of the development application process. Different fees may be set based on the size of the tract or other relevant factors.

(e) *Additional regulations.* Notwithstanding any other provision of this Chapter, the Planning Board may, by regulation adopted under Method (3), require preapplication submissions for a forest stand delineation and allow modified application submissions or procedures for development projects of a minor scale or public utility projects.

(f) *Reports.* The Planning Board must make all reports on the County forest conservation program to the General Assembly and State Department of Natural Resources that are required under State law or regulation. The reports should be reviewed by the County Arborist for comment, and copies of all final reports must be transmitted to the County Council and County Executive.

(g) *List of Off-Site Property for Mitigation.* The Planning Director should develop and maintain a list of properties that may be suitable for off-site mitigation required under forest conservation plans. The Planning Director should develop the list in coordination with the County Arborist, the Departmer

of Environmental Protection, the Department of Public Works and Transportation, the Department of Economic Development, the Soil Conservation District, and other appropriate agencies.

(h) *Sediment Control Permit Applications.* The Planning Director and the Director of the Department of Environmental Protection should develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person who obtains a sediment control permit for land disturbing activities on less than 40,000 sq. ft. of land and who later seeks preliminary plan of subdivision approval for the same land. These procedures may include requiring an applicant for a sediment control permit to submit a declaration of intent enforceable under Section 22A-19. (1992 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 4, § 1; 1996 L.M.C., ch. 14, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or
- (b) a county highway project individually listed in the County Capital Improvements Program and submitted to the Planning Board under mandatory referral review before this Act took effect [November 5, 2001].

Sec. 22A-27. Forest conservation fund.

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

- (a) **In lieu fees.** Money deposited in the forest conservation fund instead of planting must be spent on the reforestation and afforestation for which the money is deposited, including costs directly related to site identification, acquisition, design, and preparation, and must not revert to the general fund. The permanent preservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation at a rate of 2 acres of forest preservation for each acre of planting required. Funds remaining after all reforestation and afforestation requirements are satisfied may be spent on any other tree conservation activity, including street tree planting.
- (b) **Penalties.** Money collected for noncompliance with a forest conservation plan or the associated 2-year maintenance agreement must be deposited in a separate account in the forest conservation fund. Money deposited in this fund may be used to administer this Chapter. (1992 L.M.C., ch. 4, § 1; 2001 L.M.C., ch. 19, § 1.)

Editor's note—2001 L.M.C., ch. 19, § 2, reads as follows:

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

- (a) a preliminary or final forest conservation plan approved before this Act took effect [November 5, 2001], or

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Secs. 22A-28, 22A-29. Reserved.

Article V. County Arborist.

Sec. 22A-30. County Arborist.

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

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

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

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

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

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

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

(5) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and

(6) any other duties required by law or assigned by the County Executive. (1992 L.M.C., ch. 4, § 1)

Endnotes

*Editor's note-2005 L.M.C., ch. 32, § 2, repeals 1992 L.M.C., ch. 4, § 2, set forth below. Chapter 22A is derived from 1992 L.M.C., ch. 4, § 1. Sections 2, 4 and 5 read as follows: Sec. 2. Setting of in lieu fees

and maximum administrative civil penalty. Until altered by law or resolution, the fee in lieu of afforestation or reforestation is 30 cents per square foot of the area of required planting and the maximum administrative civil penalty authorized is \$1.00 per square foot of the area found to be in noncompliance. Sec. 4. Administrative Actions.

The Chief Administrative Officer is expressly authorized to initiate all necessary budgetary, personnel, and other administrative actions to implement this Act. Until a County Arborist is appointed, the responsibility of the Arborist under this Act to approve proposed commercial logging and timber harvesting operations, review proposed variances, and review certain reports, must be exercised by the Director of the Department of Environmental Protection or the Director's designee. Sec. 5. Effective Date; Delayed Provisions. Except as

[Note] provided in Section 3 and this Section, this Act takes effect 91 days following the date that it becomes law, Section 22A-26 (Regulations) as enacted by Section 1 of this Act takes effect on that date. All other provisions of this Act take effect on July 1, 1992. Sec. 3. Contingency on Commission resolution. Until express authority for Planning Board administration and enforcement of Article II, as enacted in Section 1 of this Act, is provided under State law, this Act is contingent on and does not become effective until the Maryland-National Capital Park and Planning Commission adopts a resolution under Section 7-111(f) of Article 28 of the Maryland Code allocating the functions provided under this Act to the Montgomery County Planning Board. These requirements by State law: 1992, ch. 643, and Park and Planning Resolution No. 92-07.

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