

Expedited Bill No. 36-20
Concerning: Forest Conservation –
Amendments
Revised: 1/25/2020 Draft No. 3
Introduced: July 29, 2020
Enacted: February 2, 2021
Executive: February 12, 2021
Effective: February 12, 2021
Sunset Date: None
Ch. 1, Laws of Mont. Co. 2021

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the Planning Board

AN EXPEDITED ACT to:

- (1) apply the forest conservation law to two or more platted contiguous lots that collectively total at least 40,000 square feet under certain circumstances;
- (2) modify provisions related to the preferred sequence for afforestation and reforestation, forest mitigation banks, and in lieu fees to conform with state law
- (3) exempt agricultural activities from the forest stand delineation and forest conservation requirements only if the property remains in agricultural use;
- (4) exempt local government highway construction activities from forest stand delineation and forest conservation requirements;
- (5) clarify that modifications requiring the approval of a conditional use/special exception are not exempt from the forest stand delineation and forest conservation plan requirements;
- (6) require the approval of a tree save plan for any activity or development exempt from the forest stand delineation or forest conservation land requirements if the activity would impact a significant, specimen, or champion tree;
- (7) provide that an exemption granted expires after 5 years if development has not begun;
- (8) increase the length of the binding maintenance agreement required in forest conservation plans;
- (9) alter the variance process;
- (10) revise the membership and frequency of meetings of the Forest Advisory Committee;
and
[[10]] (11) generally amend the Forest Conservation Law.

By amending

Montgomery County Code

Chapter 22A, Forest Conservation – Trees

Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-12, 22A-13, 22A-15, 22A-17, 22A-21, 22A-27, [[and]] 22A-30, and 22A-31

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-3, 22A-4, 22A-5, 22A-6, 22A-9, 22A-10, 22A-11, 22A-**
2 **12, 22A-13, 22A-15, 22A-17, 22A-21, 22A-27, [[and]] 22A-30, and 22A-31 are**
3 **amended as follows:**

4 **22A-3. Definitions.**

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

6 * * *

7 Forest edge means the transition zone from an area of forest to fields, meadows,
8 yards, or other open spaces. Forest edge ~~[[includes]]~~ includes forest that was
9 previously interior forest, but has become forest edge due to clearing.

10 * * *

11 Land disturbing activities:

12 (1) has the same meaning as in Chapter 19; and

13 (2) means cutting, clearing, or grading of more than 5,000 square feet of
14 forest[[, as defined by this Section]].

15 * * *

16 Restoration plan means a plan prepared in response to a violation of this
17 Chapter.

18 * * *

19 Significant tree means a tree of any species that is 24 inches or greater in
20 diameter at 4.5 feet above the ground.

21 * * *

22 Watershed means any area delineated as a watershed in the Montgomery
23 County Municipal Separate Storm Sewer System (MS4) Permit
24 Implementation Program (delineated by the State of Maryland as [[a]] an 8-
25 digit watershed), and [or] any smaller area within the watershed that is
26 delineated by the State of Maryland as a 12-Digit watershed.

27 * * *

28 **22A-4. Applicability**

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

31 * * *

32 (e) highway construction not exempt under subsections 22A-5 (e) or (p);
33 [and]

34 (f) a public utility not exempt under subsections 22A-5 (g), (o)(1) and (2),
35 or (p)[.]; and

36 (g) [[Clearing]] clearing or grading conducted on two or more platted
37 contiguous lots;

38 (1) that collectively total 40,000 square feet or larger;

39 (2) that are graded at the same time; and

40 (3) where sediment control is required.

41 * * *

42 **22A-5. Exemptions.**

43 The requirements of Article II do not apply to:

44 * * *

45 (b) an agricultural activity if:

46 (1) [that is] the activity is exempt from the [both platting
47 requirements under Section 50-3 and] requirements to obtain a
48 sediment control permit under Section 19-2(b)(2); Agricultural
49 support buildings and related activities are exempt only if built
50 using best management practices;

51 (2) the activity is subject to a declaration of intent filed with the
52 Planning Director stating that the agricultural areas will remain
53 in commercial agriculture; and

54 (3) [Agricultural] agricultural support buildings and related
55 activities are [[exempt only if]] built using best management
56 practices;

57 * * *

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

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

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

71 (C) has received a sediment control permit from the
72 Department of Permitting Services and posted the required
73 financial security under Chapter 19[.][[; and

74 (D) complies with the provisions in 22A-6(c)]].

75 * * *

76 (e) a State, [or] County, or municipal highway construction activity that is
77 subject to Section 5-103 of the Natural Resources Article of the
78 Maryland Code, or Section 22A-9. All requirements of an exemption
79 for a County or municipal highway construction activity are detailed in
80 Section 22A-6(d) and Section 22A-9;

81

* * *

82

(n) any minor subdivision under Division 50.7 of Chapter 50 if:

83

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

84

85

86

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

87

88

(A) more than a total of 20,000 square feet of forest[[,]];

89

(B) any forest in a stream buffer[[,]];

90

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

91

92

(D) any specimen or champion tree[[,]] or

93

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

94

95

96

[(3)](2) there is no proposed land disturbance and a declaration of intent is 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 approval of the minor subdivision.

97

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* * *

101

(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)] 22A-6(a) applies if any specimen or champion tree would be cleared. This

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107

108 exemption does not permit any forest or tree that was preserved
 109 under a previously-approved forest conservation plan or tree save
 110 plan to be cut, cleared, or graded unless the previously-approved
 111 plan is amended to allow that activity. This exemption does not
 112 apply if:

113 * * *

114 (t) a modification to [an existing] a:

115 (1) non-residential developed property if:

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

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

122 (C) the modification does not require approval of a
 123 preliminary plan, [or] administrative subdivision plan, or
 124 conditional use/special exception;

125 (D) the modification does not increase the developed area by
 126 more than 50%, and [the] any existing principal building,
 127 as defined in Chapter 59, [development] is retained; and

128 (E) the pending development application does not propose any
 129 residential uses; or

130 (2) residential developed property if:

131 (A) forest is not impacted or cleared;

132 (B) the modification is not located in a stream buffer;

- 133 (C) the modification does not require approval of a
- 134 preliminary plan, [or] administrative subdivision plan, or
- 135 conditional use/special exception;
- 136 (D) the modification does not increase the developed area by
- 137 more than 50%;
- 138 (E) the existing structure is not modified; and
- 139 (F) the pending development application does not propose any
- 140 new buildings or parking facilities.

141 * * *

142 (v) a stream restoration project for which the applicant for a sediment
143 control permit has:

- 144 (1) ~~[[executed a binding maintenance agreement of at least 5 years~~
- 145 ~~with the affected property owner or owners;~~
- 146 (2)]] agreed to replace every tree removed and plant the new trees
- 147 before the end of the first planting season after final stabilization;
- 148 ~~[[and]]~~
- 149 ~~[[3)]] (2)~~ confirmed that the tract is not included in a previously
- 150 approved forest conservation plan; and
- 151 (3) executed a binding maintenance agreement for planting and
- 152 maintenance of mitigation trees for at least 5 years with the
- 153 affected property owner or owners, or with the Maryland
- 154 National-Capital Park and Planning Commission if the applicant
- 155 is performing a stream restoration project on their own property.
- 156 If an applicant is performing a stream restoration project on their
- 157 own property, financial security is required ~~[[as required]]~~ under
- 158 Section 22A-12(i).

159 * * *

160 **22A-6. [Exemptions-] Special provisions – Exemptions; tree save plans; and**
 161 **highway projects.**

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

168 [(b) Tree save plan provision.]

169 (a) *Tree save plan requirements.* An activity or development that would be
 170 exempt under Section 22A-5, and ~~[[will]]~~ that would impact a
 171 significant, specimen, or champion tree, [except that the proposed
 172 activity involves clearing of a specimen or champion tree,] requires the
 173 approval of a tree save plan, which may require tree preservation or
 174 mitigation for loss of individual trees. The plan requirements must be
 175 based on the size and character of the trees to be cleared. If trees to be
 176 cleared are part of an existing scenic buffer between public parkland
 177 and a proposed development, trees which are smaller than specimen
 178 size may be included in the plan.

179 (b) *Exemption expiration.* A confirmed exemption that has not started any
 180 authorized land disturbance within 5 years from the date of approval of
 181 the exemption is expired, unless the confirmed exemption pertains to a
 182 subdivision with a validity period of more than 5 years. If the
 183 subdivision has a validity period of more than 5 years, the confirmed
 184 exemption does not expire until the end of the subdivision validity
 185 period.

186 (c) [[Timber harvests. Any commercial logging or timber harvesting
187 exempt from submitting a forest conservation plan must include
188 provisions for the establishment of a new age class with sufficient
189 replanting to meet the definition of forest with 100 stems per acre
190 within 2 years after the overstory trees are removed.

191 (d)]] Tree save plan violations. A violation of any requirement of a tree save
192 plan or similar condition of approval may be enforced using any remedy
193 provided under this Chapter.

194 [(e)] (d) Highway projects. The provisions of Article III apply to County
195 and municipal highway projects exempt from Article II under Section
196 22A-5(e).

197 * * *

198 **22A-9. County and Municipal Highway Projects.**

199 (a) *General*

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

203 * * *

204 **22A-10. General.**

205 * * *

206 (b) *Forest stand delineation.*

207 * * *

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

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

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

213 (c) *Forest conservation plan.*

214 (1) A forest conservation plan is intended to govern conservation,
 215 maintenance, and any afforestation or reforestation requirements
 216 which apply to the site. A forest conservation plan must contain
 217 information on the extent and characteristics of the trees and
 218 forested area to be retained or planted, proposed locations for on-
 219 site and off-site reforestation, scheduling, protective measures, a
 220 binding maintenance agreement effective for at least [2] 5 years,
 221 a binding agreement to protect forest conservation areas, and
 222 other information or requirements specified in the regulations or
 223 technical manual.

224 * * *

225 **22A-11. Application, review, and approval procedures.**

226 (a) *General.*

227 * * *

228 (3) Notice. [[Notice]] Public posting and written notice of forest
 229 conservation plan applications must be provided by applicants
 230 as specified in regulation.

231 * * *

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

233 * * *

234 (2) *Forest conservation plan.* Upon notification that the forest stand
 235 delineation is complete and correct, the applicant must submit to
 236 the Planning Director a [preliminary] final forest conservation
 237 plan. The Planning Board must consider the [preliminary] final
 238 forest conservation plan when reviewing the mandatory referral
 239 application or the park development plan. [The deadlines for

240 reviewing the final forest conservation plan are the same as in
 241 paragraph (d)(2) of this Section.]

242 * * *

243 **22A-12. Retention, afforestation, and reforestation requirements.**

244 (a) *Table.*

<i>Forest Conservation Threshold and Required Afforestation as a Percentage of Net Tract Area</i>		
<i>Land Use Category</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% ^[* 1]	15%
Planned unit development areas	[15-]20% ^[* 1]	15%
Commercial and industrial use areas	15%	15%

245 ^[1]The residential and institutional portions of the tract must meet the 20%
 246 requirement. If a planned unit development was initially approved before January 1,
 247 1992, and is between 25% and 75% complete on July 1, 1992, (as measured by the

248 total acreage subject to the planned unit development that has received site plan
 249 approval), the forest conservation threshold is calculated at 15 per cent. If the
 250 planned unit development is less than 25% complete, the forest conservation
 251 threshold is calculated using the adjustment shown in the chart.]

252 * * *

253 (e) *Standards for reforestation and afforestation.*

254 [(1) (A) *Preferred sequence.* Except as provided in the technical
 255 manual or otherwise in paragraph (1) of this subsection,
 256 the preferred sequence for afforestation and reforestation
 257 is, in general: on-site afforestation or reforestation[,
 258 including techniques which encourage natural
 259 regeneration where feasible; landscaping with an
 260 approved plan; and]; off-site afforestation or
 261 reforestation[, including techniques which encourage
 262 natural regeneration where feasible]; enhancement of
 263 existing forest through on-site selective clearing,
 264 supplemental planting, or both; acquiring credit(s) from an
 265 off-site forest mitigation bank; paying a fee in-lieu; and
 266 landscaping with an approved plan.]]

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

275 afforestation or reforestation;[[, including techniques
 276 which encourage natural regeneration where feasible]]
 277 enhancement of existing forest through on-site selective
 278 clearing, supplemental planting, or both; acquiring
 279 credit(s) from an off-site forest mitigation bank; paying a
 280 fee in-lieu; and landscaping with an approved plan.

281 * * *

282 (g) *In lieu fee.*

283 [(1) *General.* If a person satisfactorily demonstrates that the
 284 requirements for reforestation or afforestation on-site or off-site
 285 cannot be reasonably accomplished, the] A person [must
 286 contribute] contributing money to the forest conservation fund as
 287 an in lieu fee must do so at a rate specified by law or Council
 288 resolution, but not less than the rate required under Section 5-
 289 1610 of the Natural Resources Article of the Maryland Code.
 290 Any in lieu fee payment must be made before any land disturbing
 291 activity, as defined in [Chapter 19] Section 22A-3, occurs on a
 292 section of the tract subject to the forest conservation plan. A
 293 person may make [[a contribution]] an in lieu fee payment to the
 294 forest conservation fund only if the person satisfactorily
 295 demonstrates that:

- 296 (1) (A) the requirements for reforestation or afforestation on-site
 297 or off-site cannot [[be]] reasonably be accomplished[[,
 298 and]];
 299 (B) appropriate credits generated by a forest mitigation bank
 300 in the same watershed within the County are not
 301 available[, or]; and

302 (B) if appropriate credits generated by a forest mitigation bank
 303 in the same watershed within the [[county]] County are not
 304 available, [[that]] appropriate credits generated by a forest
 305 mitigation bank in the [[same county]] County are not
 306 available; or

307 (2) the off-site reforestation and afforestation requirements are less
 308 than 0.5 acre, and the Planning Board or Planning Director, as
 309 appropriate, finds that:

310 (A) no on-site priority planting area is present; and

311 (B) no other appropriate on-site planting area is available.

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

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

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

325 (C) Afforestation on sites with no priority planting areas. If a
 326 site has afforestation planting requirements and the
 327 Planning Board or Planning Director, as appropriate, finds
 328 that no on-site priority planting area is present and no other

329 appropriate on-site planting area is available, the applicant
330 may pay the fee instead of doing off-site afforestation.

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

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

344 (h) *Agreements.*

345 (1) *Maintenance agreement.* A forest conservation plan must
346 include a [2] 5-year binding agreement for maintenance of
347 conservation areas. A person subject to the binding agreement
348 may request that the binding agreement be reduced to 3 years if
349 the forest conservation inspector finds that the agreement has
350 been fulfilled, unless the forest conservation plan is within a
351 special protection area. If the forest conservation plan is within a
352 special protection area, the binding maintenance agreement must
353 be for a minimum of 5 years and may not be reduced. The
354 binding maintenance agreement may include[, including the]
355 watering (as practical), feeding, non-native invasive control, and

356 replanting of areas to be afforested or reforested [outside of
 357 Special Protection Areas, and 5 years for plantings inside Special
 358 Protection Areas]. A maintenance agreement may also be
 359 required for non-native invasive control of forest edge. The
 360 binding agreement for maintenance starts upon satisfactory
 361 inspection of the plantings required under the forest conservation
 362 plan. A staged project may have more than one agreement.

363 * * *

364 (i) *Financial Security.*

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

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

371 * * *

372 (2) *Preferred form.* The preferred financial security instruments are
 373 an irrevocable letter of credit or a cash bond for a minimum of 5
 374 years that may be reduced to 3 years upon request by the person
 375 subject to the binding maintenance agreement if the forest
 376 conservation inspector finds that the binding maintenance
 377 agreement has been fulfilled, unless the forest conservation plan
 378 is within a special protection area. If the forest conservation plan
 379 is within a special protection area, the financial security must be
 380 for a minimum of 5 years and may not be reduced. The letter of
 381 credit must expressly state that the total sum is guaranteed to be
 382 available and payable on demand directly to the Maryland-

383 National Capital Park and Planning Commission in the event of
 384 forfeiture. A certificate of guarantee or a surety bond may also
 385 be used, including a bond payable to the Commission and County
 386 that additionally guarantees completion of public improvements
 387 associated with the proposed development. The financial
 388 security instrument must be made payable to the Commission
 389 and must be of a form and content satisfactory to the Commission
 390 and its legal counsel.

391 (3) *When required.* The financial security instrument must be
 392 provided prior to any land disturbing activity, as defined in
 393 [Chapter 19] Section 22A-3, occurring on a section of the tract
 394 subject to the forest conservation plan.

395 * * *

396 **22A-13. Forest mitigation banks.**

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

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

403 [(c)] [(2)] (c) A forest mitigation bank must [use] have native plants [for
 404 afforestation and reforestation, unless inappropriate].

405 [(d)] [(3)] (d) A person proposing to create a forest mitigation bank must
 406 submit a forest mitigation bank plan to the Planning Director[,] for
 407 review and approval. [which must include:]

408 [(4)] (e) The forest mitigation bank plan must include:

- 409 ~~[(1)] ~~[(A)]~~ (1)~~ a [2-year] maintenance agreement which meets the
- 410 standards in subsection 22A- 12(h)(1);
- 411 ~~[(2)] ~~[(B)]~~ (2)~~ all information required by subsection 22A-10(c)
- 412 for a forest conservation plan;
- 413 ~~[(3)] ~~[(C)]~~ (3)~~ [the] draft easements, covenants, or deed
- 414 restrictions for the area [to be sold to the developer when credits
- 415 are withdrawn from the] included in the forest mitigation bank;
- 416 and
- 417 ~~[(D)] (4)~~ the number of forest mitigation bank credits available for
- 418 sale as either existing forest credits or planted forest credits,
- 419 where ~~[(one)] 1 acre of forest mitigation bank credit equals 1 acre~~
- 420 of planted forest, or 2 acres of existing forest.
- 421 ~~[(e)] ~~[(5)]~~ (f)~~ Forest mitigation banks must be established in priority
- 422 areas described in subsection 22A-12(e)(3), or in areas identified in a
- 423 master plan or functional plan.
- 424 [(f)] Credits must not be debited from a forest mitigation bank until all trees
- 425 have been planted and accepted by the Planning Director, and either
- 426 financial security which meets the standards in subsection 22A-12(i)
- 427 has been provided or the Planning Director has found that a sufficient
- 428 number of trees have successfully survived for 2 years after planting.]
- 429 [(g)] To debit credits from an approved forest mitigation bank, the easement,
- 430 covenants, or deed restrictions which assure that the newly reforested
- 431 or afforested area of land remains a forest in perpetuity must be
- 432 conveyed to the Planning Board or its assignee and the applicant must
- 433 show that credits are available and the applicant has the right to debit
- 434 them. The credits must buy an amount of land equal to the applicant’s

435 off-site reforestation or afforestation requirements under its approved
436 forest conservation plan.]

437 ~~[(b)]~~ (g) Purchasing and selling forest mitigation bank credits.

438 (1) Before selling forest mitigation bank credits:

439 (A) the forest mitigation bank plan must be approved by the
440 Planning Director; and

441 (B) easements, covenants, or deed restrictions which assure
442 the area of land within the mitigation bank remains a forest
443 in perpetuity must be conveyed to the Planning Board or
444 its assignee, and the applicant must show that credits are
445 available and the applicant has the right to debit them.

446 (2) Credits must not be debited from a portion of a forest mitigation
447 bank where forest planting is required until:

448 (A) all trees have been planted and accepted by the Planning
449 Director; and

450 (B) either a financial security which meets the standards in
451 subsection 22A-12(i) has been provided, or the Planning
452 Director has found that a sufficient number of trees have
453 successfully survived for 2 years after planting.

454 (3) Forest mitigation bank credits must be acquired from a forest
455 mitigation bank within the same 8-digit watershed, as delineated
456 by the State of Maryland, as where the development activity is
457 located. If forest mitigation bank credits are not available within
458 the same ~~[[8-Digit]] 8-digit watershed within the County,~~
459 applicants ~~[[can then]] may acquire forest mitigation bank credits~~
460 from any approved forest mitigation bank within the County.

461 (4) The forest mitigation bank credits acquired must be equal to the
 462 applicant's off-site reforestation or afforestation requirements
 463 under the approved forest conservation plan.

464 * * *

465 **22A-15. Inspections and notification**

466 * * *

467 (c) *Required inspections.*

468 (1) The Planning Department must conduct [6] the 7 field
 469 inspections [of a site as] specified in this subsection at each site.

470 (2) The Planning Director must inspect each site that is subject to an
 471 approved forest conservation plan:

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

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

477 (C) after all construction activities are completed, to determine
 478 the level of compliance with the [forest conservation]
 479 approved plan;

480 (D) before any required reforestation and afforestation
 481 planting is started;

482 (E) after required reforestation and afforestation have been
 483 completed, to verify the planting is acceptable and begin
 484 the maintenance and management period; [and]

485 (F) 2 years after reforestation and afforestation have been
 486 completed, to determine survival and assess necessary

487 maintenance activities for the remaining duration of the
 488 maintenance and management period; and

489 [(F)] (G) at the end of the maintenance and management
 490 period, to determine the level of compliance with the
 491 planting plan and, if appropriate, authorize release of
 492 financial security.

493 (3) The Planning Director must conduct inspections under
 494 subparagraphs (A) through (C) of paragraph (2) of this
 495 [[Section]] subsection for a confirmed exemption from
 496 submitting a forest conservation plan.

497 (4) The Planning Director must conduct inspections under
 498 subparagraphs (A) through (G) of paragraph (2) of this
 499 [[Section]] subsection for a plan approved under Section 22A-
 500 9[[:]].

501 * * *

502 **22A-17. Corrective actions**

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

- 507 (1) stop the violation;
 508 (2) stabilize the site to comply with a reforestation plan;
 509 (3) stop all work at the site;
 510 (4) restore or reforest unlawfully cleared areas;
 511 (5) submit a restoration plan or forest conservation plan for the
 512 property;

- 513 (6) place forested or reforested land under long-term protection by a
- 514 conservation easement, deed restriction, covenant, or other
- 515 appropriate legal instrument; or
- 516 (7) submit a written report or plan concerning the violation.

* * *

518 **22A-21. Variance**

* * *

- 520 (b) *Application requirements.* An applicant for a variance must:
- 521 (1) describe the special conditions peculiar to the property or other
- 522 circumstances which would cause the unwarranted hardship;

* * *

- 524 (c) *Referral to other agencies* [[for non 22A-12(b)(3) variance requests]].

525 (1) [[Before the Planning Board considers a variance, not related to

526 22A-12(b)(3), the]] The Planning Director must send a copy of

527 each variance request related to Section 22A-12(b)(3)(A) or (B)

528 to the County Arborist and any other appropriate agency for a

529 written recommendation[.] before the Board acts on the request.

530 (2) The Planning Director may send a copy of each variance request

531 related to Section 22A-12(b)(3)(C) to the County Arborist and

532 any other appropriate agency for a written recommendation

533 before the Board acts on the request.

534 (3) If a recommendation on the variance is not submitted to the

535 Planning Board, or Planning Director, as appropriate, within 10

536 days after the referral, the recommendation must be presumed to

537 be favorable.

* * *

539 **22A-27. Forest Conservation Fund.**

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(b) *Penalties.* Money collected for noncompliance with a forest conservation plan or the associated [2] 5-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.

22A-30. County Arborist

* * *

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

* * *

(4) review variance requests and reports under Article II, but not including those under 22A-12(b)(3);

* * *

22A-31. Forest Conservation Advisory Committee

* * *

(c) *Composition and terms of members.*

(1) The Committee has ~~[[16]]~~ 9 public members. The public members should include:

- (A) landscape architects;
- (B) arborists and urban foresters;
- (C) horticulturists and representatives from the nursery industry;
- (D) persons directly engaged in agriculture;
- (E) persons directly involved in the building industry;
- (F) members of citizen groups;

566 (G) members of environmental and conservation
567 organizations;

568 (H) representatives of public utility companies; and

569 (I) persons who own a forest stand of at least 2 acres.

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

572 (A) ~~[[Economic Development]]~~ Agricultural Services;

573 (B) Environmental Protection;

574 (C) Transportation; and

575 (D) Permitting Services.

576 * * *

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

578 * * *

579 (3) The Committee meets at the call of the Chair. The Committee
580 must meet as often as necessary to perform its duties, but not less
581 than ~~[[9]]~~ 6 times each year.

582 * * *

583 **Sec. 2. Transition.** Section 1 of this Act must not apply to a county
584 highway project if, prior to the effective date of the Act, construction funding has
585 been appropriated for the project, and the project has been submitted to the
586 Planning Board under mandatory referral.

Approved:



Tom Hucker, President, County Council

2/4/2021
Date

Approved:



Marc Elrich, County Executive

2/12/2021
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council

2/18/2021
Date