

**Montgomery County Forest and Tree Law – 2011 Draft Amendments Developed by  
Department of Environmental Protection**

**NOTE: Has not been introduced in County Council as of June 2011**

**Article I. Purpose and General Provisions.**

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

This Chapter may be referred to as the Montgomery County Forest and Tree Canopy Conservation Law.

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

(a) Findings. The County Council finds that forests and tree canopy constitute an important natural resource. Forests and 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 communities by providing for recreation, compatibility between different land uses, and aesthetic appeal. The Council finds that forest and tree loss as a result of development and other land disturbing activities is a serious problem in the County.

(b) Purpose. The purposes of this Chapter are to:

- (1) save, maintain, and establish forests and tree canopy for the benefit of County residents and future generations;
- (2) establish procedures, standards, and requirements to minimize forest and tree loss as a result of development and to protect forests and trees during and after construction or other land disturbing activities;
- (3) maximize forest and tree canopy retention;

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

(5) establish funds for future forest and tree canopy conservation projects, including afforestation and reforestation; and

(6) provide a focused and coordinated approach for County forest and tree conservation activities.

### **Sec. 22A-3. Definitions.**

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

*Afforestation* means the establishment of forest or tree cover 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 activities* means farming activities 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, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.

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

*Champion tree class* means the largest known tree of its species and all known trees of the same species within 75 percent of the dbh of the current Champion tree.

*Champion tree* means the largest tree of its species in the County, as identified in the register of champion trees maintained by the County Forest Conservancy District Board or its

designee. *Champion tree* does not include non-native invasive species identified by the Maryland Invasive Species Council.

*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.

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

*Diameter at breast height (dbh)* means the diameter of a tree measured at 4.5 feet (1.37 m) above ground on the uphill side of the tree.

*Director of Environmental Protection* means the Director of the Department of Environmental Protection or the Director's designee.

*Director of Permitting Services* means the Director of the Department of Permitting Services or the Director's designee.

*Forest* means a biological community dominated by trees and other woody plants (including 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 forests which otherwise meet this definition may be less than 50 feet wide if they exhibit the same character and composition as the overall forest. *Forest* includes:

- (1) any area that has at least 100 live trees per acre with at least 50 percent of those trees having a 2-inch or greater dbh above the ground;
- (2) any area that has been cut but not cleared; and
- (3) any area where at least one layer of woody vegetation, including trees, shrubs, and leaf-litter, is not present because of site conditions, pest predation, human impacts, or non-native species.

*Forest* does not include an orchard.

*Forest conservation* means the retention of existing forest or the creation of new forest.

*Forest Conservation Coordinator* means the person appointed by the Director of the Department of Environmental Protection to perform the duties specified in Section 22A-30.

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

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

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

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

*Forest stand delineation* means the collection and presentation of data on the existing vegetation on a site proposed for development or land disturbing activities.

*Land disturbing activities* means

(1) any earth movement or land change which may result in soil erosion from water or wind;

(2) the movement of sediments into state waters or onto land, including tilling, clearing, grading, excavating, stripping, stockpiling, filling, and related activities; or

(3) covering land with an impermeable material.

*Licensed tree expert* means a person who has received from the Maryland Department of Natural Resources a license indicating the person's qualifications to practice as a tree expert.

*Limits of disturbance* means a clearly designated area within which land disturbance is slated to occur. Limits of forest disturbance includes all forested areas within the limits of

disturbance; whereas limits of tree canopy disturbance includes all areas with tree canopy within the limits of disturbance.

*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, stormwater management, sewer, communications, trains, pedestrians, and vehicles. A linear project may traverse fee simple properties through defined boundaries or through easement rights.

*Lot* means a unit of land, the boundaries of which have been established by subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by 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.

*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.

*Natural resources inventory* means a collection and presentation of data on the existing natural and environmental information on a site and the surrounding area proposed for development and land disturbing activities.

*Net tract area* means the total area of a site, including both forested and unforested areas, to the nearest 1/10 acre, reduced by those areas where any previously approved forest conservation plan, any recorded forest conservation or scenic easement, or any road or utility rights-of-way exists that is unrelated to, and will not be improved as part of, the development application with the following exceptions:

- (1) in any agricultural or resource areas, the portion of the site for which land use will be changed or will no longer be used for primarily agricultural activities;
- (2) for a linear project, the area within the limits of disturbance as shown on the sediment control plan including new access roads and storage areas; and
- (3) for a stormwater management facility or non-linear stream restoration project, the area within the limits of disturbance as shown on the sediment control plan.

*100-year floodplain* means a relatively flat or low land area adjoining a river, stream, pond, stormwater management structure, or watercourse subject to partial or complete inundation during a flood that has a one percent chance of being equaled or exceeded in a given year. Unless otherwise stated, this calculation is based on the contributing watershed being completely under existing zoning.

*Person* means:

- (1) to the extent allowed by law, any agency or instrument of 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.

*Planning Board* means the County Planning Board of the Maryland-National Capital Park and Planning Commission or the Planning Board's designee.

*Planning Director* means the Director of the Montgomery County 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 approved under § 7-207 of the Public Utility Companies Article, Annotated Code of Maryland; and

(2) water, stormwater management, sewer, electric, gas, telephone, and cable service facilities and lines.

*Qualified professional* means a licensed forester, licensed landscape architect, or other qualified professional who meets all of the requirements under § 08.19.06.01A of the Code of Maryland Regulations.

*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 dbh 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 forests and trees 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* means any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, that are under a single ownership, or are contiguous and under diverse ownership, where development is performed as part of a unit, subdivision, or project.

*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 where:

- (1) existing water resources, or other environmental features directly relating to those water resources, are of high quality or unusually sensitive; and

(2) proposed land uses would threaten the quality or preservation of those resources or features in the absence of special water quality protection measures which are closely coordinated with appropriate land use controls.

*Specimen tree* means a tree that is a particularly impressive or an unusual example of a species of trees, due to its size, shape, age or any other trait that epitomizes the character of the species.

*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 10,000 square feet or more 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.

*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* includes the critical root zone.

*Tree canopy* means the combined area of the crowns of all trees.

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

*Tree Canopy Conservation Fund* means a special fund maintained by the County to be used for the purposes specified in Section 22A-27.

*Tree inventory* means the collection and presentation of data on the existing trees on a site proposed for development or land disturbing activities.

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

*Watershed* means the total drainage area contributing runoff to a single point.

*Wetland* means the area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

**Sec. 22A-4. Applicability.**

Except as otherwise provided by County law, this Chapter applies to:

(a) any person required by law to obtain development plan approval, diagrammatic plan approval, project plan approval, preliminary plan of subdivision approval, site plan approval or a sediment control permit; and

(b) any logging or harvesting operation of timber or other wood products that requires a sediment control permit, including any harvesting operation performed on agricultural land or conducted under the forest conservation and management program described in § 8-211, Tax-Property Article, Annotated Code of Maryland Code, that requires a sediment control permit, unless:

(1) the property on which the logging or harvesting operation is conducted is not the subject of an application for development within 5 years after the sediment control permit has been issued; and

(2) the person performing the logging or harvesting operation has:

(A) demonstrated to the satisfaction of the County Forest Conservation

Coordinator that the logging or timber harvesting plan is consistent with applicable sustainable forest management guidelines; and

(B) received a sediment control permit from the Department of Permitting Services; and

(3) the Director of Permitting Services sends a copy of all sediment control permits issued for commercial logging or timber harvesting operations to the Planning Director.

**Sec. 22A-5. Exceptions.**

This Chapter does not apply to:

(a) any tree nursery activity performed with an approved Soil Conservation and Water Quality Plan as defined in Section 19-48;

(b) any cutting or clearing of trees within a public utility right-of-way for the construction or modification of electric generation facilities approved under § 7-205, § 7-207, or § 7-208 of the Public Utility Companies Article, Annotated Code of Maryland, if:

(1) the person undertaking those activities has obtained any certificate of public convenience and necessity required under §§ 7-207 and 7-208 of the Public Utility Companies Article, Annotated Code of Maryland; and

(2) the cutting or clearing of forest or tree canopy is conducted so as to minimize the loss of both;

(c) routine maintenance or emergency repairs of public utility rights-of-way licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland;

(d) the cutting or clearing of trees to comply with the applicable provisions of any federal law or regulation governing the obstruction of navigable airspace if the Federal Aviation Administration has determined that the trees create a hazard to aviation; or

(e) any non-coal surface mining conducted in accordance with applicable state law.

## **Article II. Forest and Tree Canopy Conservation Requirements, Procedures, and Approvals.**

### **Sec. 22A-6. Forests – General.**

(a) *Submissions.* Except as provided in subsection (i), a person that is subject to this Chapter must submit certain information on the condition of the existing natural resources and the amount of disturbance of forests to either the Director of Permitting Services or the Planning Director as follows:

(1) If the subject property does not exceed 40,000 square feet in size, the person must submit limits of forest disturbance information to the Director of Permitting Services in accordance with Section 22A-7.

(2) If the subject property is equal to or greater than 40,000 square feet in size, the person must submit a natural resources inventory/forest stand delineation and forest conservation plan to the Planning Director in accordance with Section 22A-8.

(b) *Timing of submissions.* The limits of forest disturbance or the natural resources inventory/forest stand delineation and forest conservation plan, must be submitted and reviewed in conjunction with the review process for a sediment control permit, development plan, project plan, preliminary plan of subdivision, site plan, special exception, or mandatory referral, whichever comes first.

(c) *Incomplete submissions.* Neither the Director of Permitting Services nor the Planning Director may approve an incomplete submission.

(d) *Review of submissions.*

(1) *Limits of Forest Disturbance and Natural Resources Inventory/Forest Stand Delineation.* The Director of Permitting Services or the Planning Director must notify the person submitting the limits of forest disturbance information or natural resources inventory/forest stand delineation as to whether the information submitted is complete and approved within 30 days after receiving that information.

(2) *Forest Conservation Plan.* The Planning Director must notify the person submitting the forest conservation plan as to whether the information submitted is complete and approved within 45 days after receiving that information.

(3) *Extensions of reviews.* The Director of Permitting Services or the Planning Director may extend the notification deadline under this subsection for one additional period not to exceed 15 days for extenuating circumstances upon written notice to the person submitting the information. Also, either Director may extend this deadline for one additional period not to exceed 15 days at the request of the applicant for good cause shown.

(4) *Untimely notification.* If the Director of Permitting Services or the Planning Director does not notify the applicant within the time frame required under this subsection, the information submitted will be deemed approved.

(e) *Coordination of review by the Director of Permitting Services.* The Director of Permitting Services must coordinate review of the limits of forest disturbance with the Planning Director, the Director of Environmental Protection, the Washington Suburban Sanitary Commission, any other relevant regulatory agency, and any public utility that will serve the site,

to promote consistency between the objectives of this Chapter and other development requirements.

(f) *Coordination of review by the Planning Director.* The Planning Director must coordinate review of the natural resources inventory/forest stand delineation and the forest conservation plan with the Director of Permitting Services, the Director of Environmental Protection, the Washington Suburban Sanitary Commission, any other relevant regulatory agency, and any public utility that will serve the site to promote consistency between the objectives of this Chapter and other development requirements.

(g) *Time frame of validity.* An approved limits of forest disturbance submission or natural resources inventory/forest stand delineation is only valid for 2 years after the date of approval unless:

(1) the Planning Director has accepted either a final forest conservation plan or preliminary forest conservation plan submitted by the applicant as complete; or

(2) the limits of forest disturbance submission or natural resources inventory/forest stand delineation has been recertified by a qualified professional.

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

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

(2) the applicant pays any fees required under this Chapter in accordance with any payment schedule approved by the Director of Permitting Services or the Planning Director.

(i) *Exceptions.* This Section does not apply to:

(1) any project reviewed for forest conservation by the Maryland Department of Natural Resources; or

(2) any highway construction activity that is subject to § 5-103, Natural Resources Article, Annotated Code of Maryland.

**Sec. 22A-7. Forests – Submissions to the Director of Permitting Services.**

(a) *General.* The limits of forest disturbance information submitted to the Director of Permitting Services must document the extent of the existing forest and the total area of forest to be disturbed by the proposed activity.

(b) *Incorporation of limits of forest disturbance.* The limits of forest disturbance information for the subject property must be incorporated as part of a sediment control or building site plan.

(c) *Limits of forest disturbance.* The limits of forest disturbance information for the subject property must include:

(1) a map delineating the following:

(A) the property and net tract area boundaries;

(B) the limits of disturbance of the proposed activity including stockpile areas;

(C) the existing forest cover on the subject net tract area;

(D) the intersection of forest cover and the limits of disturbance; and

(E) any other information required by regulation; and

(2) A table summarizing the square footage of:

(A) the property and net track area;

(B) the limits of disturbance of the proposed activity including stockpile areas;

(C) the existing forest cover;

- (D) the intersection of forest cover and the limits of disturbance; and
- (E) any other information required by regulation.

(d) *Modifications to forest conservation plans and limits of forest disturbance.* The Director of Permitting Services may approve modifications to a limits of forest disturbance if:

- (1) the modifications are consistent with this Chapter and if field inspections or other evaluation reveals minor inadequacies of the plan and the modification of the plan in order to remedy such inadequacies will not negatively affect the final approved plan; or
- (2) the action is otherwise required in an emergency situation.

(e) *Qualifications of preparer.* If the forest cover Geographic Information System (GIS) layer developed by the Planning Board or the Department of Environmental Protection is used without alteration, then a professional engineer, land surveyor, architect, or other person qualified to prepare erosion and sediment control plans under Chapter 19 is also qualified to prepare the limits of forest disturbance information under this Section. Otherwise, the limits of forest disturbance information must be prepared by a qualified professional as defined in this Chapter.

**Sec. 22A-8. Forests – Submissions to the Planning Director.**

(a) *General.* The natural resources inventory/forest stand delineation and the forest conservation plan submitted to the Planning Director must document the conditions of the existing natural resources and the total area of forest to be disturbed by the proposed activity. The Planning Director must use the information included in those submissions to identify the most suitable and practical areas for forest conservation and mitigation.

(b) *Natural resources inventory/forest stand delineations.* A person that is subject to this Section must submit a natural resources inventory/forest stand delineation that includes a map showing:

- (1) the property and net tract area boundaries;
- (2) a topographic depiction delineating intermittent and perennial streams, wetlands, stream valley buffers, 100-year floodplains, steep slopes over 25 percent, and other critical habitat;
- (3) a soils depiction delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15 percent or more;
- (4) the existing forest cover, including forest stands indicating species, location, and size of trees, and showing dominant and co-dominant forest types;
- (5) all trees that:
  - (A) are part of a historic site or associated with a historic structure;
  - (B) have been designated by the State or County as a national, State, or local champion tree or fall within the champion tree class; or
  - (C) have a dbh of 24 inches or greater or are otherwise specimen trees;
- (6) any trees, shrubs, or plants designated as rare, threatened, or endangered under the federal Endangered Species Act of 1973, the Maryland Nongame and Endangered Species Conservation Act, or other applicable state or federal law; and
- (7) any other information required by regulation.

(c) *Simplified natural resources inventory/forest stand delineation.*

(1) The applicant must submit limits of tree canopy disturbance instead of the natural resources inventory/forest stand delineation 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 net tract area not subject to this Article, such as areas remaining in agricultural use as part of a subdivision.

(2) The simplified natural resources inventory/forest stand delineation must include a map showing:

- (A) the property and net tract area boundaries;
- (B) the existing forest cover;
- (C) all trees that:
  - (i) are part of a historic site or associated with a historic structure;
  - (ii) have been designated by the State or County as a national, State, or local champion tree or fall within the champion tree class; or
  - (iii) have a dbh of 24 inches or greater or are otherwise specimen trees;
- (D) any trees, shrubs, or plants designated as rare, threatened, or endangered under the federal Endangered Species Act of 1973, the Maryland Nongame and Endangered Species Conservation Act, or other applicable state or federal law; and
- (E) any other information required by regulation.

(d) *Forest conservation plan.* A person that has an approved natural resources inventory/forest stand delineation must submit a forest conservation plan concurrently with any required site plan, record plat, or sediment control plan. The Planning Board must review the

forest conservation plan concurrently with any applicable development plan, project plan, preliminary plan of subdivision, or site plan. The forest conservation plan must include:

- (1) a map showing:
  - (A) the property and the net tract area boundaries;
  - (B) the limits of disturbance of the proposed activity including stockpile areas;
  - (C) the existing forest cover, including forest stands, based on the approved natural resources inventory/forest stand delineation;
  - (D) any buffers for intermittent and perennial streams, wetlands, stream valleys, 100-year floodplains, and other critical habitat;
  - (E) all trees that:
    - (i) are part of a historic site or associated with a historic structure;
    - (ii) have been designated by the State or County as a national, State, or local champion tree or fall within the champion tree class; or
    - (iii) have a dbh of 24 inches or greater or are otherwise specimen trees;
  - (F) any trees, shrubs, or plants designated as rare, threatened, or endangered under the federal Endangered Species Act of 1973, the Maryland Nongame and Endangered Species Conservation Act, or other applicable state or federal law;
  - (G) the intersection of forest cover identified in the approved natural resources inventory/forest stand delineation and the limits of disturbance;

(H) all areas on the site that are available for forest retention, reforestation or afforestation activities;

(I) the locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation; and

(J) any other information required by regulation; and

(2) A table summarizing the square footage of:

(A) the property and the net tract area;

(B) the limits of disturbance of the proposed activity including stock pile areas;

(C) the existing forest cover on the property, based on the approved natural resources inventory/forest stand delineation;

(D) the intersection of forest cover and the limits of disturbance; and

(E) any other information required by regulation.

(e) *Protective measures for specimen trees and other significant trees.* A forest conservation plan must include protective measures designed to conserve specimen trees and other significant trees, including mature trees on adjacent properties, from adverse impacts that may be caused by the development or land disturbing activities proposed for the net track area.

(f) *Two-staged reviews.* A forest conservation plan may be reviewed in two stages with the submission of a preliminary plan and a final forest conservation plan. 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 site.

(g) *Modifications to forest conservation plans and limits of forest disturbance.* The Planning Director may approve modifications to a limits of forest disturbance and/or an approved forest conservation plan that are consistent with this Chapter if:

(1) field inspections or other evaluations reveal minor inadequacies of the plan and the modification of the plan to remedy the inadequacies will not adversely affect the final approved plan; or

(2) the action is otherwise required in an emergency situation.

(h) *Submissions for special exceptions.* If a special exception application is subject to this Chapter, the applicant must submit the required information to the Planning Board before the Board of Appeals may consider the application for the special exception.

(i) *Qualifications of preparer.* The natural resources inventory/forest stand delineation and forest conservation plan must be prepared by a qualified professional as defined in this Chapter.

**Sec. 22A-9. Forests – Retention and mitigation.**

(a) *Forest retention.*

(1) **Objectives.** The primary objective of the forest conservation plan is to identify areas to retain existing forests. Every reasonable effort should be made to minimize the cutting or clearing of forests, trees and other woody plants during the development of a subdivision plan, grading and sediment control activities, and implementation of the forest conservation plan.

(2) Retention and protection priorities. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection, and they must be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Director of Permitting Services or the Planning Director that every reasonable effort has been made to protect them and the plan cannot reasonably be altered:

(A) trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, steep slopes, and critical habitats;

(B) contiguous forests that connect forest land within and adjacent to the site;

(C) rare, threatened, and endangered species;

(D) trees that are part of or connected to an historic site;

(E) any tree having a dbh of 30 inches or more;

(F) champion trees, trees within the champion tree class, and specimen trees; and

(G) areas designated as priority save areas in a master plan or functional plan.

(b) *Mitigation.* Mitigation is required to compensate for the loss of, or disturbance to, forest resources.

(1) Mitigation requirements are based on the square footage of forest disturbed.

(2) Mitigation requirements increase as the amount of forest disturbance increases.

(3) Mitigation requirements must be satisfied through fees paid by the applicant into the Forest Conservation Fund and, where applicable, long-term forest conservation easements granted by the applicant to Maryland National Capital Park and Planning Commission on land dedicated to the conservation of forests. The regulations adopted by the Planning Board and the County Executive under this Chapter must include fee schedules. There must be separate fee schedules for applicants that:

- (A) provide land on-site for a forest conservation easement;
- (B) provide land off-site for a forest conservation easement; or
- (C) provide no land for a forest conservation easement.

(4) Any mitigation fee per square foot adopted under this Section must not be less than any contribution required under Md. Code Ann., Nat. Res. § 5-1610 (c).

(c) *Afforestation.*

(1) A site with less than 20 percent of the net tract area in forest cover must be afforested up to 20 percent of the net tract area.

(2) Afforestation requirements must be satisfied through fees paid by the applicant into the Forest Conservation Fund and, where applicable, long-term forest conservation easements granted by the applicant to Maryland National Capital Park and Planning Commission on land dedicated to afforestation. The regulations adopted by the Planning Board under this Chapter must include fee schedules. There must be separate fee schedules for applicants that:

- (A) provide land on-site for a forest conservation easement;
- (B) provide land off-site for a forest conservation easement; or
- (C) provide no land for a forest conservation easement.

(d) *Standards for reforestation and afforestation.*

(1) Sequence for mitigation. Payments made to the Forest Conservation Fund must only be appropriated for implementation of the mitigation activities listed below in the following sequence of priority:

(A) enhancement of existing forests through on-site non-native invasive and native invasive species management control, supplemental planting, or a combination of both;

(B) establishment of on-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible;

(C) establishment of off-site afforestation or reforestation, including techniques which encourage natural regeneration where feasible;

(D) purchases of credits from forest mitigation banks approved in advance by the County;

(E) acquisition of off-site protective easements for existing forested areas not currently protected, including forest mitigation banks;

(F) establishment of street trees for sites located in existing population centers, which meet landscape or streetscape goals identified in an applicable master plan; and

(G) establishment of canopy trees in landscaping.

(2) Priority areas and plantings. The establishment of reforestation to meet mitigation requirements and afforestation should be prioritized towards stream buffers, connections between and additions to existing forested areas, critical habitat areas, and steep slope or erodible soils. Native plant materials must be used to the maximum extent feasible in meeting the afforestation and mitigation requirements of this Section. Unless the Planning Board

or Planning Director orders otherwise, the required use of natural regeneration under this Chapter supersedes any prohibition under Chapter 58.

(3) Location requirements. Reforestation to meet mitigation requirements or afforestation must occur in the watershed in which the project is located. However, if mitigation or reforestation cannot be reasonably accomplished in the same watershed in which the project is located, then the reforestation or afforestation must occur in an adjacent watershed if possible. Otherwise the reforestation or afforestation may occur anywhere in the County.

(4) Planned unit developments; other staged development. Notwithstanding any other provision of this Section, the limits of forest disturbance, natural resources inventory/forest stand delineation, and forest conservation plan may be satisfied within the total area covered by the development plan or project plan instead of the net tract area.

(e) *Agreements.* A forest conservation plan must include appropriate measures for the protection of conservation areas; limitations on the use of these areas consistent with conservation and management practices; and legal instruments such as conservation easements, deed restrictions, covenants, and other agreements, as necessary.

**Sec. 22A-10. Tree Canopy – General.**

(a) *Submissions.* Except as provided in subsection (i), a person that is subject to this Chapter must submit certain information on the amount of disturbance of tree canopy to either the Director of Permitting Services or the Planning Director as follows:

(1) If the subject property does not exceed 40,000 square feet in size, the person must submit a limits of tree canopy disturbance to the Director of Permitting Services in accordance with Section 22A-11.

(2) If the subject property is equal to or greater than 40,000 square feet in size, the person must submit a limits of tree canopy disturbance to the Planning Director in accordance with Section 22A-12.

(b) *Timing of submissions.* The person must submit the limits tree canopy disturbance for review in conjunction with the review process for a sediment control permit, natural resources inventory/forest stand delineation, forest conservation plan, development plan, project plan, preliminary plan of subdivision, site plan, special exception, or mandatory referral. However, the person must not submit the limits of tree canopy disturbance earlier than 2 years before submitting the application for the sediment control permit.

(c) *Incomplete submissions.* Neither the Director of Permitting Services nor the Planning Director may approve an incomplete submission.

(d) *Review of submissions.*

(1) *Limits of tree canopy disturbance.* The Director of Permitting Services or the Planning Director must notify the person submitting the limits of tree canopy disturbance as to whether the information submitted is complete and approved.

(2) *Extensions of reviews.* The Director of Permitting Services or the Planning Director may extend the notification deadline under this subsection for one additional period not to exceed 15 days for extenuating circumstances upon written notice to the person submitting the information. Also, either Director may extend this deadline for one additional period not to exceed 15 days at the request of the applicant for good cause shown.

(3) *Untimely notification.* If the Director of Permitting Services or the Planning Director does not notify the applicant within the timeframe required under this subsection, the information submitted will be deemed approved.

(e) *Coordination of review by the Director of Permitting Services.* The Director of Permitting Services must coordinate review of the limits of tree canopy disturbance with the Planning Director, the Director of Environmental Protection, the Washington Suburban Sanitary Commission, any other relevant regulatory agency, and any public utility that will serve the site to promote consistency between the objectives of this Chapter and other development requirements.

(f) *Coordination of review by the Planning Director.* The Planning Director must coordinate review of the limits of tree canopy disturbance with the Director of Permitting Services, the Director of Environmental Protection, the Washington Suburban Sanitary Commission, any other relevant regulatory agency, and any public utility that will serve the site to promote consistency between the objectives of this Chapter and other development requirements.

(g) *Time frame of validity.* An approved limits of tree canopy disturbance submission is only valid for 2 years after the date of approval unless:

(1) the Planning Director has accepted either a final forest conservation plan or preliminary forest conservation plan that includes the limits of tree canopy disturbance submitted by the applicant as complete; or

(2) the limits of tree canopy disturbance submission has been recertified by a qualified professional.

(h) *Issuance of sediment control permit.* The Director of Permitting Services must not issue a sediment control permit to a person that must comply with this Article until:

(1) the Planning Director or the Director of Permitting Services has approved an applicant's limits of tree canopy disturbance; and

(2) the applicant pays any fees required under this Chapter in accordance with any payment schedule approved by the Director of Permitting Services or the Planning Director.

(i) *Exceptions.* This Section does not apply to any logging or harvesting operation of timber or other wood products that requires a sediment control permit.

**Sec. 22A-11. Tree Canopy – Submissions to the Director of Permitting Services.**

(a) *General.* The limits of tree canopy disturbance information submitted to the Director of Permitting Services must document the extent of the existing area of tree canopy and the total area of tree canopy to be disturbed by the proposed activity.

(b) *Incorporation of limits of tree canopy disturbance.* The limits of tree canopy disturbance information for the subject property must be incorporated in a sediment control or building site plan.

(c) *The limits of tree canopy disturbance.* The limits of tree canopy disturbance information for the subject property must include:

(1) a map delineating:

(A) the property and net tract area boundaries;

(B) the limits of disturbance of the proposed activity, including stockpile areas;

(C) the existing tree canopy cover on the subject net tract area;

(D) the intersection of tree canopy cover and the limits of disturbance;

and

(E) any other information required by regulation; and

(2) A table summarizing the square footage of:

(A) the property and net tract area;

- (B) the limits of disturbance of the proposed activity including stock pile areas;
  - (C) the existing tree canopy cover;
  - (D) the intersection of tree canopy cover and the limits of disturbance;
- and
- (E) any other information required by regulation.

(d) *Modifications to limits of tree canopy disturbance.* The Director of Permitting Services may approve modifications to an approved limits of tree canopy disturbance if:

- (1) the modifications are consistent with this Chapter, field inspections or other evaluations reveal minor inadequacies of the plan, and modification of the plan to remedy the inadequacies will not negatively affect the final approved plan; or
- (2) the action is otherwise required in an emergency situation.

(e) *Qualifications of preparer.* If the tree canopy cover GIS layer developed by the Department of Environmental Protection or Planning Board is used without alteration, then a professional engineer, land surveyor, architect, or other person qualified to prepare erosion and sediment control plans under Chapter 19 is also qualified to prepare the limits of tree canopy disturbance information under this Section. Otherwise, the limits of tree canopy disturbance information must be prepared by a qualified professional as defined in this Chapter.

**Sec. 22A-12. Tree Canopy – Submissions to the Planning Director.**

(a) *General.* The limits of tree canopy disturbance information submitted to the Planning Director must document the extent of the existing tree canopy and the total area of tree canopy to be disturbed by the proposed activity. The Planning Director must use the information to identify the most suitable and practical areas for tree conservation and mitigation.

(b) *Limits of tree canopy disturbance.* A person that is subject to this Section must submit the same limits of tree canopy disturbance information as that required under Section 22A-11.

(c) *Incorporations of the limits of tree canopy, the natural resources inventory/forest stand delineation, and forest conservation plan.* If an applicant is required to submit a natural resources inventory/forest stand delineation and a forest conservation plan to the Planning Director, then the limits of tree canopy disturbance must be incorporated into those submissions.

(d) *Modifications to limits of tree canopy disturbance.* The Planning Director may approve modifications to an approved limits of tree canopy disturbance that are consistent with this Chapter if:

(1) field inspections or other evaluations reveal minor inadequacies of the plan and the modification of the plan to remedy such inadequacies will not adversely affect the final approved plan; or

(2) the action is otherwise required in an emergency situation.

(e) *Submissions for special exceptions.* If a special exception application is subject to this Chapter, the applicant must submit the required information to the Planning Board to satisfy this Chapter before the Board of Appeals may consider the application for the special exception.

**Sec. 22A-13. Tree Canopy – Retention and mitigation.**

(a) *Objectives.* The primary objective of this Section is to retain existing trees. Every reasonable effort should be made to minimize the cutting or clearing of trees and other woody plants during the development of a subdivision plan, grading and sediment control activities, and implementation of the forest conservation plan.

(b) *Mitigation.* Mitigation is required to compensate for the loss of or disturbance to tree canopy.

(1) Mitigation requirements are based on the square footage of tree canopy disturbed.

(2) Mitigation requirements increase as the amount of tree canopy disturbance increases.

(3) Mitigation requirements must be satisfied through fees paid by the applicant into the Tree Canopy Conservation Fund and, where applicable, long-term forest conservation easements granted by the applicant to Maryland National Capital Park and Planning Commission on land dedicated to the conservation of forest and trees. The regulations adopted by the Planning Board and the County Executive under this Chapter must include fee schedules.

There must be separate fee schedules for applicants that:

(A) provide land on-site for a conservation easement;

(B) provide land off-site for a conservation easement; and

(C) provide no land for a conservation easement.

(c) *Standards for establishing new tree canopy and reforestation.*

(1) Sequence for mitigation. The sequence for mitigation should generally emphasize payment by the applicant into the Tree Canopy Conservation Fund to implement the following:

(A) enhancement of existing tree canopy through on-site non-native invasive and native invasive species management control, supplemental planting, or a combination of both;

(B) establishment of on-site tree canopy or reforestation, including techniques that encourage natural regeneration where feasible;

(C) establishment of off-site tree canopy or reforestation, including techniques that encourage natural regeneration where feasible;

(D) purchasing credits from forest mitigation banks designated in advance by the County;

(E) acquisition of off-site protective easements for existing forests or areas with existing tree canopy not currently protected, including forest mitigation banks;

(F) establishment of street trees for sites located in existing population centers that meet landscape or streetscape goals identified in an applicable master plan; and

(G) establishment of canopy trees in landscaping.

(2) Priority areas and plantings. The establishment of tree canopy to meet mitigation requirements should be prioritized to shade impervious surfaces, manage stormwater runoff, and generally increase canopy coverage. Native plant materials should be used to the extent their usage is feasible in meeting the mitigation requirements of this Section.

(3) Location requirements. The establishment of tree canopy must occur in the watershed in which the project is located. However, if tree canopy cannot reasonably be established in the same watershed in which the project is located, then the tree canopy must be established in an adjacent watershed if possible. Otherwise the tree canopy may be established anywhere in the County.

(4) Planned unit developments; other staged development. Notwithstanding any other provision of this Section, the limits of tree canopy disturbance, natural resources

inventory/forest stand delineation, and forest conservation plan may be satisfied within the total area covered by the development plan or project plan instead of the net tract area.

**Sec. 22A-14. Mitigation banks.**

(a) A person may afforest or reforest an area of land to create a forest mitigation bank.

(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 the use of other plant species is approved by the Planning Director.

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

(1) a 5-year binding agreement for maintenance of conservation areas, including the watering (as practical), feeding, replanting and maintaining free of invasive plants of areas to be afforested or reforested;

(2) all information required by subsection 22A-8 for a forest conservation plan; and

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

(e) Forest mitigation banks must be established in priority areas described in subsection 22A-9, 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 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.

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

#### **Sec. 22A-15. Inspections and notification.**

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

(b) *Plan to be on site; field markings.* A copy of the approved limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation plan must be available on the site for inspection by representatives authorized by the Director of Permitting Services or the Planning Director. Field markings must exist on site before and during installation of all protective devices, construction, or other land disturbing activities.

(c) *Required inspections.* The Planning Department must conduct at least 3 field inspections on each site that is subject to an approved limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan. The inspections must occur:

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

(2) after necessary stress reduction measures for trees and roots have been completed and the protection measures have been installed, but before any clearing or grading begins; and

(3) after all construction activities are completed, to determine the level of compliance with the limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation plan.

(d) *Other inspections.* The Director of Permitting Services or the Planning Director may authorize additional inspections or meetings as necessary to administer this Chapter, including an inspection to confirm a natural resource inventory and/or forest stand delineation.

(e) *Scheduling requirements.* A person must request an inspection by the Planning Director at least 7 days before the required date of the inspection under subsection (c).

(f) *Coordination.* The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Director of Permitting Services to avoid inconsistent activities relating to the limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation plan and sediment control reviews.

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

(a) *Class A violation.* Any violation of this Chapter or any regulations adopted under it is a Class A civil violation. The maximum civil fine is \$1,000. Each day a violation continues may be treated as a separate violation under this Chapter.

(b) *Enforcement authority.* The Department of Permitting Services and the Planning Board have primary enforcement authority under this Chapter. Administrative enforcement actions may be initiated by the Planning Director under this Section.

(c) *Civil actions.* The Board may bring any civil action authorized by law 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 Board may also bring a civil action to enforce a limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan and any associated

agreements, easements, and restrictions, or to enforce an administrative order. These remedies are in addition to any remedy that the Board or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan.

(d) *Administrative civil penalty.*

(1) In addition to any other remedy under this Article, a person who violates this Chapter, any regulation adopted under this Chapter, a limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan, or any associated agreement or restriction, is liable for an administrative civil penalty imposed by the Planning Board. This administrative 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 administrative 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 forest or 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.

(3) The Planning Board or Planning Director may treat any forest or tree 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.

(4) 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).

(5) The Planning Board must include the reasons for imposing an administrative civil penalty in its resolution adopting the administrative order.

(e) *Enforcement notices.* The Director of Permitting Services and the Planning Director may issue notices as provided in this subsection to enforce any provision of this Chapter. The issuance of a notice under this subsection does not require the previous issuance of any other notice.

(1) *Notice of violation.*

(A) The Director of Permitting Services or the Planning Director may issue a notice of violation to a person that the Director believes has violated or is violating this Chapter. Either Director must retain a copy of each notice issued.

(B) A notice of violation issued under this Section must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(C) The notice of violation must contain the following information:

(i) the name and address of the person charged with a violation;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred;

(iv) a statement advising the recipient of the corrective or remedial action to be taken, which may include a meeting with staff from the Department of Permitting Services or the Planning Board to develop a compliance plan, and the date by which any corrective or remedial action must be completed; and

(v) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee if the notice of violation was issued by the Planning Director.

(2) *Administrative citation.*

(A) The Planning Director may issue an administrative citation to a person who the Planning Director believes has violated or is violating this Chapter. The Planning Director may use any citation consistent with this Section, including the State of Maryland Uniform Civil Citation form. The Planning Director must certify the truth of the allegations in the citation. The Planning Director must retain a copy of each citation.

(B) An administrative citation issued under this Section must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(C) The administrative citation must contain at least the following information:

(i) the name and address of the person charged with a violation;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred;

(iv) the amount of the fine assessed;

(v) how, when, where, and to whom the fine may be paid; and

(vi) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee.

(3) *Notice of hearing.*

(A) The Planning Director may issue an administrative notice which informs an alleged violator of an enforcement hearing to be held by the Planning Board or the Board's designee to address an alleged violation.

(B) A notice of hearing issued under this Section must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(C) The notice of hearing must contain at least the following information:

- (i) the name and address of the person charged with a violation;
- (ii) the nature of the violation;
- (iii) the place where and the approximate date when the violation occurred; and
- (iv) a statement advising the recipient of the date, time, and location of the hearing.

(f) *Funds.* Money collected under this Section must be deposited into the Forest Conservation Fund or the Tree Canopy Conservation Fund.

**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 specified by the Planning Director:

- (1) stop the violation;
- (2) stabilize the site to comply with a forest conservation plan;
- (3) stop all work at the site;
- (4) restore or reforest unlawfully cleared areas;
- (5) submit a limits of tree canopy disturbance, limits of forest disturbance, forest conservation plan, or tree protection plan for the net tract area;
- (6) place forested land, reforested land, or land with individual significant trees 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.

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

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

- (1) not paid fees for mitigation or afforestation required under this Chapter;
- (2) not complied with the requirements of an administrative action or order issued under this Chapter;
- (3) intentionally misrepresented or failed to disclose a relevant or material fact during the application process; or
- (4) violated a requirement of a limits of tree canopy disturbance, limits of forest disturbance, a forest conservation plan, or an associated legal instrument.

**Sec. 22A-19. Reserved.**

**Sec. 22A-20. Hearings and appeals.**

(a) *General.* Except as provided under subsections (c) and (d), the requirements for notice, public hearing, and administrative decision-making for the associated development approval must be followed when reviewing a natural resources inventory/forest stand delineation or limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation plan.

(b) *Forest conservation plans and variances approved by the Planning Board.* A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation

plan (including a request for a variance) may appeal the final administrative action on the development approval under the Maryland Rules of Procedure and any other law applicable to the proceeding.

(c) *Plans approved by the Planning Director.*

(1) *Appeal to Planning Board.* An applicant may appeal the decision of the Planning Director on any natural resource inventory/forest stand delineation, limits of tree canopy disturbance, limits of forest disturbance, and/or forest conservation plan to the Planning Board within 30 days after the Planning Director issues a written decision.

(2) *Hearing; decision.* The Planning Board must hold a de novo hearing on the appeal. The Board must adopt a written resolution explaining its decision. For purposes of judicial review, the decision of the Planning Board is the final agency action.

(3) *Appeal.* After receiving the Planning Board's decision, an applicant may appeal the decision within 30 days under the Maryland Rules of Procedure.

(d) *Administrative enforcement process.*

(1) *Notice.* A citation, notice of violation, or other administrative notice issued by the Planning Director under Section 22A-16(e) or an order issued under Section 22A-17 must give the recipient the right to request, within 15 days after receiving the notice, a hearing before the Planning Board or the Board's designee.

(2) *Hearing.*

(A) If the recipient of a notice or order requests an opportunity for a hearing, the Board or its designee must promptly schedule a hearing unless the recipient consents to a delay. The filing of a request for a hearing does not stay an administrative order to stop work, stabilize a site, or stop a violation.

(B) If the Planning Board or the Board's designee holds a hearing under this Section, the Board or its designee must issue a notice of the hearing date.

(C) The Planning Board may designate a hearing officer, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter. The hearing officer must submit the required report and recommendation to the Board not later than 60 days after the hearing record closes. The hearing officer may extend the time to file the report by notifying all parties.

(3) *Decision.* The Planning Board must inform the recipient in writing of its decision on an administrative enforcement action. The Board's decision is the final agency action for all purposes.

(4) *Appeal.* After receiving the Planning Board's decision, an aggrieved person may appeal the Board's action within 30 days under the Maryland Rules of Procedure.

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

(a) *Written request.* An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the applicant shows that enforcement would result in unwarranted hardship. A request for a variance suspends the time requirements in Sections 22A-6 and 22A-10 until the Planning Board acts on the request.

(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 this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;

(3) verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur as a result of granting 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 send a copy of each request to the Forest Conservation Coordinator, Planning Director, and any other appropriate agency for a written recommendation before acting on the request. If a recommendation on the variance is not submitted to the Planning Board within 30 days after the referral, the recommendation must be presumed to be favorable.

(d) *Minimum criteria.* A variance may only be granted if it meets the criteria in subsection (a). However, 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 result from actions by the applicant;

(3) is based on 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 must find that the applicant has met all requirements of this Section before granting a variance. The Board may impose appropriate conditions 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.

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

#### **Article IV. Administration**

##### **Sec. 22A-26. General.**

(a) *Regulations.* The Planning Board and the County Executive must adopt regulations, including necessary procedures, to administer this Chapter. In adopting the regulations, the Planning Board and the County Executive must follow the adoption procedures for a Method (2) regulation under Section 2A-15 and adhere to 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 limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan.

(b) *Technical manual.* The Planning Director and the Director of Permitting Services must prepare a technical manual that includes guidance and methodologies for:

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

- (2) preparing and evaluating a forest conservation plan, including priorities for forest retention, reforestation, and afforestation, and a recommended tree species list;
- (3) preparing and evaluating maps of limits of forest disturbance;
- (4) preparing and evaluating maps of limits of tree canopy disturbance;
- (5) providing forest or tree protective measures during and after clearing or construction, including planting, tree relocation, and maintenance;
- (6) inspecting and monitoring a site for compliance with the limits of tree canopy disturbance, limits of forest disturbance, and forest conservation plans; and
- (7) 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 limits of tree canopy disturbance, limits of forest disturbance, or forest conservation plan.

(d) *Administrative fee.* The Planning Board and the County Executive must, by regulation adopted under Method (1), establish a schedule of fees that at least partially cover the costs of administering this Chapter.

(e) *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 must be reviewed by the Director of Permitting Services and the County Forest Conservation Coordinator for comment, and copies of all final reports must be transmitted to the County Council and County Executive.

(f) *List of off-site property for mitigation.* The Planning Director may develop and maintain a list of properties that are suitable for off-site mitigation. The Planning Director should develop the list in coordination with the Department of Environmental Protection, the Department of Transportation, the Department of General Services, the Department of Economic Development, the Soil Conservation District, and other appropriate agencies.

(g) *Sediment control permit applications.* The Planning Director and the Director of Permitting Services may develop administrative procedures to prevent, to the extent possible, circumvention of this Chapter by a person that limits land disturbing activities to below requirements for a sediment control permit and who later disturbs additional land on the same property. These procedures may include requiring a person to submit an application for a sediment control permit enforceable under Section 22A-19.

**Sec. 22A-27. Forest and Tree Canopy Conservation Funds.**

(a) *General.* There is both a County Forest Conservation Fund and a County Tree Canopy Conservation Fund. Money deposited into these funds must be used in accordance with the adopted County budget and in accordance with the following:

(b) *Fees paid into the Forest Conservation Fund.* Money deposited in The Forest Conservation Fund to meet mitigation and afforestation requirements must be spent on reforestation and afforestation, including costs directly related to site identification, acquisition, preparation, maintenance of existing forests, and achieving forest canopy goals, and must not revert to the general fund. The permanent conservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation.

(c) *Fees paid into the Tree Canopy Conservation Fund.* Money deposited in the Tree Canopy Conservation Fund to meet mitigation requirements must be spent on establishing

canopy trees, reforestation, and afforestation, including costs directly related to site identification, acquisition, preparation, and achieving tree canopy goals, and must not revert to the general fund. The permanent conservation of priority forests, including identification and acquisition of a site, may be substituted for reforestation and afforestation.

(d) *Penalties.* Money collected for noncompliance with a limits of tree canopy disturbance or forest conservation plan related to tree canopy disturbance must be deposited in a separate account in the tree canopy conservation fund. Money collected for noncompliance with a limits of forest disturbance or forest conservation plan related to forest disturbance must be deposited in a separate account in the Forest Conservation Fund. Money deposited in these funds may be used to administer this Chapter.

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

## **Article V. Positions and Committees**

### **Sec. 22A-30. County Forest Conservation Coordinator.**

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

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

(c) *Duties.* The County Forest Conservation Coordinator 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;
- (2) advise the County Executive and County Council on the effectiveness of County programs related to forest and tree conservation;
- (3) review variance requests and reports under Article II;
- (4) provide liaison with citizens and businesses on forest and tree conservation issues and develop appropriate mechanisms for public input on conservation strategies; and
- (5) any other duties required by law or assigned by the County Executive.

**Sec. 22A-31. Forest Conservation Advisory Committee.**

(a) *Definition.* In this Section “Committee” means the Forest Conservation Advisory Committee.

(b) *Established.* The County Executive must appoint, subject to confirmation by the County Council, a Forest Conservation Advisory Committee.

(c) *Composition and terms of members.*

(1) The Committee has 16 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;
- (G) members of environmental and conservation organizations;

- (H) representatives of public utility companies; and
- (I) persons who own a forest stand of at least 2 acres.

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

- (A) Economic Development;
- (B) Environmental Protection;
- (C) Transportation; and
- (D) Permitting Services.

(3) The Executive must invite a representative from each of the following agencies to serve as an ex officio member:

- (A) the County Planning Board; and
- (B) the Washington Suburban Sanitary Commission.

(4) The term of each member is 3 years and expires on December 31. After an appointment to fill a vacancy before a term expires, the successor serves the rest of the unexpired term.

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

(1) All members of the Committee are voting members.

(2) Each January, the Executive may designate a chair and vice-chair from among the Committee's public members to serve a 1-year term. If the County Executive does not designate a chair or vice-chair by February 15, the Committee members must select a chair and vice-chair.

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

(4) A member must serve without compensation. However, a member may request reimbursement for mileage and dependent care costs at rates established by the County.

(e) *Duties.* The Committee must:

(1) advise the Executive, Council, Planning Board, and any other relevant agency, on forestry policy issues;

(2) propose to the Executive, Council, Planning Board, and any other relevant agency, proactive forestry policies, laws, and guidelines;

(3) recommend a comprehensive approach to urban forestry;

(4) advise on a tree inventory;

(5) review and comment on policies and programs related to forestry;

(6) promote and seek funding for a sustained forestry program;

(7) promote and foster a strong sense of community through urban forestry;

(8) communicate with other boards, agencies, and community residents about forestry issues; and

(9) promote volunteerism and act as a general information resource.

(f) *Annual Report.* By October 1 each year, the Committee must submit to the Executive, Council, Planning Board, and any other relevant agency, an annual report on its functions, activities, accomplishments, and plans and objectives.

(g) *Advocacy.* The Committee must not engage in any advocacy activity at the state or federal levels unless that activity is approved by the Office of Intergovernmental Relations.

(h) *Staff.* The Chief Administrative Officer must provide appropriate staff to the Committee.