

**WASHINGTON COUNTY, MARYLAND**

**FOREST CONSERVATION ORDINANCE**

Adopted June 10, 2008 – Effective July 1, 2008

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**WASHINGTON COUNTY, MARYLAND  
FOREST CONSERVATION ORDINANCE**

**ARTICLE 1 PURPOSE**

1.1 PURPOSE

The Board of County Commissioners for Washington County has determined that in order to meet the requirements of Natural Resources Article, §5-1601, et seq., Annotated Code of Maryland, the provisions of this Ordinance are enacted. This Ordinance provides the requirements and guidance for the preservation or replanting, whichever is applicable, of trees or forests during certain development activities by requiring forest stand delineations, forest conservation plans, maintenance agreements, and sureties.

**ARTICLE 2 DEFINITIONS**

In this Ordinance the following terms have the meanings indicated.

2.1. "Afforestation"

The establishment of a forest, according to the definitions and procedures contained herein, on an area not presently in forest cover.

2.2. "Agricultural activity"

Farming activities, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for the production of food and fiber products, except commercial logging and timber harvesting operations. This term includes the grazing and raising of livestock, aquaculture, sod production, orchards, nurseries, and other products cultivated as part of a recognized commercial enterprise.

2.3. "Agricultural and resource areas"

Undeveloped areas zoned for densities of less than or equal to one dwelling unit per 5 acres.

2.4. "Applicant"

A person as defined in Section 2.48 who is applying for subdivision, site plan, grading or sediment control permit approval, or who has received approval of a forest stand delineation or forest conservation plan.

2.5. "Approved forest management plan"

A document approved by the Department of Natural Resources forester assigned to Washington County which operates as a protective agreement for forest conservation as described in the Natural Resources Article, §5-1607(e)-(f), Annotated Code of Maryland.

2.6. "Caliper"

The diameter of a tree measured at 2 inches above the root collar.

2.7. "Champion tree"

The largest tree of its species within the United States, the State of Maryland, Washington County, or a municipality.

2.8. "Champion tree of the State"

A tree which appears in the list of State champion trees contained in the Appendix of the Washington County Forest Conservation Manual.

2.9. C.O.M.A.R.

The Code of Maryland Regulations. Any reference to a specific C.O.M.A.R. section shall include any amendments to that section or any successor sections that may be subsequently adopted.

2.10. "Commercial and industrial uses"

Manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding, and parking areas, and corresponds to the uses enumerated in Washington County Zoning Ordinance classifications BT, BL, BG, PB, IG, IT, PI, AP and IR as principally permitted, special exceptions or accessory uses.

2.11. "Commercial logging or timber harvesting operations"

The cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact. The cutting and removal of trees from a site for the purpose of preparing the site for future development is not included in this definition.

2.12. "Critical habitat area"

A critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall:

- A. Be likely to contribute to the long-term survival of the species;
- B. Be likely to be occupied by the species for the foreseeable future; and
- C. Constitute habitat of the species which is considered critical under Natural Resources Article, §§4-2A-04 and 10-2A-06, Annotated Code of Maryland.

2.13. "Critical habitat for endangered species"

A habitat occupied by an endangered species as determined or listed under Natural Resources Article, §§4-2A-04 and 10-2A-04, Annotated Code of Maryland.

2.14. "Declaration of intent"

A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property is exempted under Section 3.2 of this Ordinance.

2.15. "Department"

The Washington County Planning Commission and its staff or other county departments designated by the Planning Commission.

2.16. "Development Project"

The grading, construction, or redevelopment activities occurring on a specific tract of land where the tract of land is 40,000 square feet or greater.

2.17. "Development project completion"

For the purposes of afforestation, reforestation, or payment into a fund the term refers to :

- A. The release of the development bond, if required; or
- B. Acceptance of the project's streets, utilities, and public services by the appropriate authority; or
- C. Designation by the Department that a:
  - (1) Development project has been completed, or

- (2) Particular stage of a staged development project, including a planned unit development, has been completed.

2.18. "Forest"

A biological community dominated by trees and other woody plants covering a land area of at least 10,000 square feet as long as there are at least 100 live trees per acre with at least 50 percent of those trees having a 2-inch or greater diameter at 4.5 feet above the ground. Areas that have been cut but not cleared of stumps or the root mat may also be included. "Forest" does not include orchards.

2.19. "Forest Conservancy District Board"

The forestry board created for The Washington County Forestry Conservancy District under Natural Resources Article, §§5-601--5-610, Annotated Code of Maryland.

2.20. "Forest conservation"

The retention of existing forest or the creation of new forest at the levels set by this Ordinance.

2.21. "Forest Conservation and Management Agreement"

An agreement as applicable and described in C.O.M.A.R. 08.19.05.01.

2.22. "Forest conservation plan"

A plan prepared according to the requirements of this Ordinance and the Washington County Forest Conservation Technical Manual for the purpose of guiding the development or subdivision process in a manner that maximizes the preservation of existing trees and forest on the subject site and specifies how, when and where new planting will occur.

2.23. "Forest cover"

The area of a site meeting the definition of forest.

2.24. "Forest management plan"

A plan establishing best conservation and management practices for a landowner in assessment, development, and use of the resource values of forested property.

2.25. "Forest stand delineation"

An accurate scaled drawing containing all of the information required by Article 5 of this Ordinance prepared for the purpose of evaluating the existing vegetation on a site proposed for development and determining appropriate locations for the development, afforestation and reforestation.

2.26. "Growing season"

The period of consecutive frost-free days as stated in the current soil survey for Washington County published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)--(f).

2.27 "Hagerstown Urban Growth Area and Town Growth Areas"

Population centers with boundaries as designated in the Comprehensive Plan for Washington County, as adopted and amended in conformance with the Maryland Economic Growth, Resource Protection, and Planning Act of 1992.

2.27. "High density residential areas"

Areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

2.28. "Impervious surface"

Those surfaces that rainwater cannot infiltrate, including but not limited to building rooftops, pavement, sidewalks, driveways, etc.

2.29. "Immediate family member"

Father, mother, step-father, step-mother, son, daughter, brother, sister, step-son, step-daughter or grandchild.

2.30. "Institutional development area"

Schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries regardless of their Washington County Zoning Ordinance classification. Church buildings and related structures are governed by the Zoning District and corresponding land use category where they are located.

2.31. "Intermittent stream"

A stream in which surface water is absent during a part of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

2.32. "Landscaping plan"

A plan drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater using native or indigenous plants when appropriate and made part of an approved forest conservation plan.

2.33. "Linear Project"

A regulated activity whose limits are not necessarily confined to a single unit of land but more typically occur on or across multiple parcels. A linear project will usually have an elongated configuration with nearly parallel sides and be for the purpose of constructing utilities and other public services not otherwise contained in an application for subdivision or site plan approval. For the purpose of completing the calculation to determine mitigation requirements, the net tract area of a linear project shall be the land area contained within an easement, right of way, limits of disturbance, limits of construction or other such defined project boundary.

2.34. "Local agency"

Each unit in the executive, legislative or judicial branch of Washington County or municipal government, including an office or department of public works.

2.35. "Lot"

A separate and distinct unity of land described in a deed or identified on an approved subdivision plat. The term may be used interchangeably with "parcel" or "tract."

2.36. "Installation and Maintenance agreement"

The short-term management agreement required under Natural Resources Article, §5-1605, Annotated Code of Maryland and this Ordinance that details how the areas designated for afforestation and reforestation will be maintained to ensure protection, satisfactory establishment and survival.

2.37. "Medium density residential areas"

Areas zoned for densities greater than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre, including both existing and planned

development and their associated infrastructure, such as roads, utilities, and water and sewer service.

2.38. "Natural regeneration"

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.

2.39. "Net tract, lot or parcel area"

- A. Except in agriculture and resource areas or as modified by the Express Procedures in Article 6A, the net tract, lot or parcel area is the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by the area found to be within the boundaries of the 100-year floodplain as defined by the adopted Washington County Floodplain Management Ordinance.
- B. In agriculture and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain as defined by the adopted Washington County Floodplain Management Ordinance.
- C. In a linear project, the net tract, lot or parcel area is the area contained within the easement, right of way, limits of disturbance, limits of construction or other such defined project boundary.
- D. Previously disturbed or mitigated areas are exempt.

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2.40. "Nontidal Wetlands"

An area that is:

- (1) 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; and
- (2) Considered a nontidal wetland in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

2.41. "Offsite"

Beyond the boundaries of the tract, lot and remaining lands.

2.42. "Onsite"

Within the boundaries of the tract, lot or parcel being developed, including an area classified as a 100-year floodplain and the remaining lands.

2.43. "Owner"

The individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under the Subdivision Ordinance and this Ordinance.

2.44. "100-year flood"

A flood which has a 1 percent chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

2.45. "100-year floodplain"

An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood, as shown on the Federal Emergency Management Agency's 100 year floodplain delineation maps and as regulated by the Washington County Floodplain Management Ordinance.

2.46. "Parcel"

A separate and distinct unity of land described in a deed or identified on an approved subdivision plat. The term parcel may be used interchangeably with "lot" or "tract."

2.47. "Perennial stream"

A stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey and as confirmed by field verification.

2.48. "Person"

The State or County Government, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee,

guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

2.49. "Planned Unit Development or PUD"

A development pursuant to an integrated plan that provides flexibility in land use design and is approved by Washington County. A PUD usually contains a variety of residential uses of varying densities, a specific amount of commercial area and at least 25% of the land area dedicated to recreation and open space and corresponds to the Washington County Zoning Ordinance classification of PUD.

2.50. "Public utility"

Any electricity transmission line, electric generating station, water, sewer, electric, gas, telephone, and television cable service lines.

2.51. "Reforestation"

Replacement of previously existing forest removed as a result of a regulated activity. The creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre, with at least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years, according to procedures set forth in the Washington County Forest Conservation Technical Manual. The term also includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2500 square feet or more of area.

2.52. "Regulated activity"

Any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

- A. Subdivision as defined by the Washington County Subdivision Ordinance;
- B. Grading;
- C. An activity that requires a sediment control permit; or
- D. An activity that requires a site plan as defined and regulated by the Washington County Zoning Ordinance.

2.53. "Retention"

The deliberate protection and maintenance of existing trees, shrubs, or plants on the site according to established standards as provided in the Washington County Forest Conservation Technical Manual.

2.54. "Sediment control permit"

The authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland.

2.55. "Seedling"

An unbranched woody plant, less than 24 inches in height and having a diameter of less than 1/2 inch measured at 2 inches above the root collar.

2.56. "Selective clearing"

The careful and planned removal of trees, shrubs, and plants using specific standards and protection measures according to an approved forest conservation plan as defined in Section 2.22.

2.57. "Site plan"

A graphic representation of existing conditions and proposed improvements on a lot, tract or parcel as required and defined in the Washington County Zoning Ordinance.

2.58. "Special Planning Areas"

Those areas designated as Special Planning Areas on the Land Use Plan Map of Washington County's adopted Comprehensive Plan for the County and as they may be further delineated or interpreted by the Planning Commission regardless of the zoning classification.

2.59. "Steep Slope"

Slopes of 25% or more, or slopes greater than 15% where the soil erodability coefficient or K factor as determined by the most current soil survey for Washington County, Maryland is 0.35 or greater.

2.60. "Stream buffer"

An area on one or both sides of a stream that is designated for the purpose of protecting, preserving or improving water quality by providing for filtration

and dissipation of the energy of flowing water or the maintenance or stabilization of the stream bank to prevent erosion.

2.61 "Street Tree"

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A. A tree planted in an approved location in the public right-of-way, that is a minimum 1.5 inches in diameter at 4.5 feet above ground, and selected from the approved street tree list.

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B. Maximum canopy credit area for each planted street tree shall be calculated with a canopy credit as specified on the approved street tree list, unless otherwise approved by the Planning Commission.

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2.61. "Subdivision"

Any division of a unit of land into 2 or more lots, parcels, tracts or other units for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development as defined in the Subdivision Ordinance.

2.62. "Timber Harvesting"

A tree cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor. Grubbing and clearing of root mass are not included in the definition.

2.63. "Tract"

A separate and distinct unity of land described in a deed or identified on an approved subdivision plat. The term may be used interchangeably with "lot" or "parcel."

2.64. "Tree"

A large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

2.65. "Variance"

A relaxation of the requirements or standards of this Ordinance.

2.66. "Washington County Forest Conservation Technical Manual"

The Maryland Department of Natural Resources' *State Forest Conservation Technical Manual, Third Edition, 1997* incorporated herein by reference, that establishes standards of performance required and provides guidance in preparing forest stand delineations and forest conservation plans and any subsequent revisions.

2.67. "Watershed"

A contiguous area of land bounded by surface elevations that cause the water to flow naturally to the lowest elevation within the boundary.

2.68. "Whip"

An unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar.

**ARTICLE 3 APPLICATION**

3.1 Except as provided in Section 3.2 of this article, this Ordinance applies to:

- A. A person, as defined in Section 2.48, making application for a Preliminary Consultation, Preliminary and/or Final Subdivision, Preliminary and/or Final Site Plan, PUD, grading plan, or sediment control approval, or any combination thereof, on units of land that are 40,000 square feet or greater in size after the effective date of this Ordinance.
- B. A public utility not exempt under Subsection 3.2 J or K of this article.

3.2 This Ordinance does not apply to:

- A. A person as defined in Section 2.48 making application for a Preliminary Consultation, Preliminary and/or Final Subdivision, Preliminary and/or Final Site Plan, grading plan, sediment control approval or any combination thereof on a unit of land less than 40,000 square feet.
- B. A person as defined in Section 2.48 making application for a simplified subdivision as described in Section 318 of the Washington County Subdivision Ordinance.
- C. A person as defined in Section 2.48 who has made an application as required in the applicable Ordinance for a Preliminary and/or

Final Subdivision, Preliminary and/or Final Site Plan, grading plan, sediment control plan or any combination thereof before the effective date of this Ordinance.

- (1) Application to the appropriate agency for any one of the above plan approvals before the effective date of this Ordinance shall exempt the subsequent plan approvals required by Washington County for the same project from the requirements of this Ordinance.
- (2) Exemption of one section, phase or portion of a whole project will not exempt remaining future sections, phases or portions of the project.
- (3) Where there is disagreement about whether an individual submittal is part of an exempt project the Planning Commission shall make the final decision.

D. An activity, including subdivision, required for the purpose of constructing a dwelling house intended for the use of the owner of the land, or an ~~an immediate family member- child~~ of the owner, if the activity:

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(1) Does not result in the cutting, clearing, or grading of more than ~~40,000~~ 20,000 square feet of forest;

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(2) Is the subject of a declaration of intent filed with the Department, as provided for in Section 3.3 of this article, which states the name or names of the ~~children of immediate family member(s) and the relationship to~~ the owner, and that transfer of ownership to a person or persons who ~~are is~~ not ~~immediate family members~~ a child of the owner within 10 years of the date of the declaration may result in a loss of exemption;

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(3) Does not result in the creation of more than one lot per owner or child of the owner ~~immediate family member~~.

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E. A residential construction activity, except subdivision, conducted on a single lot, tract or parcel of land of any size which existed at the time of the adoption of this Ordinance if the activity:

(1) Does not result in the cumulative cutting, clearing, or grading of more than ~~40,000~~ 20,000 square feet of forest; and

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- (2) Does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this Ordinance; and
  - (3) Is the subject of a declaration of intent filed with the Department, as provided for in Section 3.3 of this article, stating that the lot will not be the subject of a regulated activity within 10 years of the date of filing of the declaration of intent.
- F. A Planned Unit Development (PUD), a Planned Business District (PB) or a Planned Industrial District (PI), that has received zoning approval, as specified in Sections 16.5(a)2, Article 17 or Article 18, respectively, of the Washington County Zoning Ordinance before the effective date of this Ordinance. All subsequent plans for development of the subject site in an approved PUD, PB or PI zone shall also be exempt.
- G. Agricultural activities that do not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices. A person engaging in an agricultural activity that causes clearing of 40,000 square feet or more of forest within a 1-year period shall not be exempt under this section unless the person files a declaration of intent as provided for in Section 3.3 of this article. The declaration of intent shall include:
  - (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 10 years from the date of the declaration; and
  - (2) A sketch map of the property which shows the area to be cleared.
- H. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot, tract or parcel, if:
  - (1) The transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and
  - (2) Both the grantor and grantee file a declaration of intent, as provided for in Section 3.3 of this article.

- I. Highway construction activities governed under Natural Resources Article, §5-103, Annotated Code of Maryland.
- J. The cutting or clearing of public utility rights-of-way licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland or land for electric generating stations licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland, if:
  - (1) Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
  - (2) Cutting or clearing of the forest is conducted to minimize the loss of forest.
- K. Any routine maintenance or emergency repairs of public utility rights-of-way.
- L. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, §8-211, Annotated Code of Maryland, that are completed before the adoption of this Ordinance.
- M. Commercial logging and timber harvesting operations, as noted in L above, completed after adoption of this Ordinance on property which:
  - (1) Has not been the subject of application for a grading permit for development within 10 years after the logging or harvesting operation, and
  - (2) Is the subject of a declaration of intent as provided for in Section 3.3 of this article and approved by the Department.
- N. Noncoal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland.
- O. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland.
- P. The cutting or clearing of trees to comply with the requirements of 14 C.F.R. 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.

- Q. ~~New development on an existing impervious surface, or~~ teardown and rebuilding on the same footprint, with no increase in the area of the tract's impervious surfaces.

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### 3.3 DECLARATION OF INTENT

- A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, §§5-103 and 5-1601, et. seq., Annotated Code of Maryland and Section 3.2 of this Ordinance.
- B. A person seeking an exemption under Section 3.2 D, E, G, H, and M of this Article shall file a declaration of intent concurrently with other permits required to conduct the exempt activity with the applicable department.
- (1) Within 10 (ten) days of approval of any permit required to conduct an exempt activity listed in Section 3.2 D,E,G,H and M, the applicant shall provide proof of recordation of the declaration of intent in the Washington County Land Records.
- C. A declaration of intent shall contain the following minimum information:
- (1) The property owner's name and permanent mailing address at the time of filing of the declaration of intent.
- (2) The liber and folio location of the deed for the property which is the subject of the declaration of intent.
- (3) An accurate measured description of the area of the lot, tract or parcel which is to be subject to the declaration of intent.
- (4) The statements required by Section 3.2 D, E, G, H, or M above, as applicable, that are required to be a part of the declaration of intent.
- (5) Any other information determined necessary by the Department to implement the intent of this Ordinance.
- (6) When not provided on a subdivision plat for recordation, a declaration of intent shall be notarized.
- D. The declaration of intent is effective for 10 years.

- E. Exempted activities as specified in Section 3.2 above are not precluded by a declaration of intent as long as they do not conflict with its purpose and comply with applicable requirements.
- F. A regulated activity may be conducted on that area of the property not covered under the declaration of intent if the requirements of this Ordinance are satisfied.
- G. When a regulated activity occurs on an area covered by a declaration of intent within 10 years of the effective date of the declaration of intent,
  - (1) There shall be an immediate loss of exemption, or
  - (2) There may be a noncompliance action taken by the Department, as appropriate, under this Ordinance; or
  - (3) The property owner may be required to meet the requirements of this Ordinance for afforestation and reforestation on the area in noncompliance.
- H. The Department may require a person failing to file a declaration of intent at the appropriate time or in the appropriate manner to do so within a specified amount of time or be subject to noncompliance or enforcement actions permitted under this Ordinance.
- I. The Department may require a person found in noncompliance with a declaration of intent to:
  - (1) Meet the retention, afforestation and reforestation requirements established in this Ordinance; and/or
  - (2) Pay a noncompliance fee, as periodically established by resolution by the Board of County Commissioners for Washington County, per square foot of forest cut or cleared in violation of the declaration of intent; and/or
  - (3) Be subject to other enforcement actions appropriate under Natural Resources Article, §5-1601, et. seq., Annotated Code of Maryland and this Ordinance
- J. In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Ordinance.

**ARTICLE 4 GENERAL REQUIREMENTS**

4.1 A person making application after the effective date of this Ordinance for a Preliminary Consultation, Preliminary and/or Final subdivision, Preliminary and/or Final Site plan, grading permit, or sediment control permit approval, or any combination thereof, for an area of land of 40,000 square feet or greater shall:

- A. Submit to the Department a forest stand delineation and a forest conservation plan for the lot, tract or parcel on which the development is located; and
- B. Use methods approved by the Department, as provided in the Washington County Forest Conservation Technical Manual, to protect retained forests and trees during construction.

4.2 If a local agency or person using state funds makes application to conduct a regulated activity, the following provisions of COMAR 08.19.04.01D–G apply.

- A. The subdivision or project plan or application for grading or sediment control permit or other construction plan shall be submitted to the Department.
- B. The Department shall notify the Maryland Department of Natural Resources within 15 days of receipt of the project plan or application.
- C. Within 15 days of receipt of notice from the Department, The Maryland Department of Natural Resources shall:
  - (1) Determine whether the project has impact on significant forest resources; and
  - (2) Notify the Department whether the project is subject to the State program.
- D. If the Maryland Department of Natural Resources determines that the project is subject to the State program, the:
  - (1) Time limit for approval of the forest stand delineation and preliminary and final forest conservation plans shall begin when the Maryland Department of Natural Resources receives the necessary documents from the local authority; and
  - (2) The Department may not approve a subdivision plan or project plan or issue the grading or sediment control permit

until the Department receives notice from the Maryland Department of Natural Resources that the standards and requirements of the State program have been satisfied or that the authority for review and approval has been delegated by the Maryland Department of Natural Resources to the Department.

- E. If the Maryland Department of Natural Resources determines the project need not be reviewed under the State program, the time limit for approval of the forest stand delineation and forest conservation plan shall be governed under the Washington County Forest Conservation Ordinance and shall begin when the Department receives notice from the Maryland Department of Natural Resources.

4.3 Where applicable according to the standards contained in Article 6A, an applicant may choose to use the standards and guidelines of the Express Procedure as provided in Article 6A.

#### **ARTICLE 5 FOREST STAND DELINEATION**

##### **5.1 GENERAL**

- A. In order to provide the greatest opportunity for the consideration of the forest conservation goals, priorities and techniques contained in this Ordinance in the design of land use proposals, the forest stand delineation should be prepared by the applicant and approved by the Department prior to the design of a subdivision, site plan, grading plan or sediment control plan.
- B. An approved forest stand delineation shall accompany a request for review or approval of a Preliminary Consultation, Preliminary and/or Final subdivision plat, Preliminary and/or Final Site plan, PUD Preliminary Development Plan, grading permit application, sediment control application or any combination thereof, whichever is the first applicable step in the plan review procedures specified by Washington County as necessary for approval of the development proposal.
- C. When an activity is eligible to use the Express Procedures as described in Article 6A the Forest Stand Delineation may be submitted for approval at the same time as the subdivision or site plan.

##### **5.2 FOREST STAND DELINEATION CONTENTS**

- A. All forest stand delineations shall contain all information required by the Washington County Forest Conservation Technical Manual for a full delineation, except as allowed in 5.3 below.
- B. A forest stand delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in C.O.M.A.R. 08.19.06.01.
- C. The individual who prepared the delineation shall certify, on the drawing, that he or she meets the professional qualifications stated in C.O.M.A.R. 08.19.06.01 and that the delineation is accurate and complete.
- D. The forest stand delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:
  - (1) A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;
  - (2) A soils map 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;
  - (3) Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;
  - (4) Location of 100-year floodplains as defined in the Washington County Floodplain Management Ordinance;
  - (5) Other information determined to be necessary by the Department in order to adequately evaluate the areas suitable and practical for forest conservation. The Department's request for additional information shall be made in writing and shall specify the additional information needed.
- E. Intermediate Forest Stand Delineations are not recognized by Washington County.

### 5.3 SIMPLIFIED FOREST STAND DELINEATION

- A. A simplified delineation may be submitted for an area:
  - (1) When no forest cover exists; or

- (2) When no forest cover is disturbed during a construction activity;
  - (3) When the Forest is designated to be under a long term protective agreement as defined in this Ordinance-
- B. The Department shall consider a simplified forest stand delineation complete if it includes:
- (1) All requirements under Section 5.2C(1), (2), (4), and (5) of this Article;
  - (2) A map showing existing forest cover and forest type as verified by field inspection and proposed limits of ground disturbance; and
  - (3) Other information determined necessary by the Department in order to adequately evaluate the areas suitable and practical for forest conservation.

#### 5.4 PERIOD OF EFFECTIVENESS

- A. An approved forest stand delineation may remain in effect for a period not longer than 5 years from the date of approval.
- B. The Department may require revision to an approved Forest Stand Delineation within the 5 year effective period if it is determined that a change in site conditions has occurred.
- C. Approval status may be extended in five year increments upon certification from a qualified professional that site conditions have not changed significantly or materially from the time of original approval.

#### 5.5 REVIEW PERIOD SPECIFIED

- A. Within 30 calendar days after receipt of the forest stand delineation, the Department shall notify the applicant or other transmitting agency whether the forest stand delineation is complete and correct.
- B. If found incomplete or incorrect the Department shall notify the applicant of the corrective measures needed and that the 30 day review period is suspended until a corrected plan is submitted.

- C. If the Department fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
- D. The 30 day review period may be extended in 15 day increments by the Department upon appropriate notification to the applicant.
- E. The 30 day review period may be extended in 15 day increments by the Department upon a request from the applicant.

**ARTICLE 6 FOREST CONSERVATION PLAN**

**6.1 GENERAL PROVISIONS**

- A. In developing a forest conservation plan, the applicant shall give priority to retention of existing forest on the site.
- B. Except when using the Express Procedure described in Article 6A, if existing forest on the site cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:
  - (1) Why the priority forests and priority areas specified in Article 8 cannot be left in an undisturbed condition;
  - (2) How the sequence of priorities for afforestation or reforestation will be followed in compliance with Article 10; and
  - (3) Where on the site afforestation or reforestation will occur in compliance with Article 10.
- C. Except when using the Express Procedure as described in Article 6A, if the applicant proposes to make a payment into the local forest conservation fund instead of retention, afforestation or reforestation, the applicant shall demonstrate to the satisfaction of the Department that the guidelines for retention or requirements for afforestation or reforestation cannot be reasonably accomplished.
- D. The Department shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- E. The following is general guidance to an applicant to indicate the appropriate Forest Conservation Ordinance requirement which is to accompany the indicated subdivision, site plan, grading, or sediment control permit. The Department may alter the sequence

indicated for good cause. The number in ( ) indicates the Forest Conservation Ordinance requirement that is to accompany the selected plan.

SELECTED PLAN

- A. SIMPLIFIED SUBDIVISION PLAT (0)
- B. PRELIMINARY SUBDIVISION PLAT (1)
- C. PRELIMINARY SUBDIVISION PLAT AND SITE PLAN (2)
- D. PRELIMINARY/FINAL SUBDIVISION (WHEN SITE PLAN REQUIRED AND TO BE SUBMITTED AT A LATER DATE) (1 or 2)
- E. PRELIMINARY/FINAL SUBDIVISION AND SITE PLAN (2)
- F. PRELIMINARY/FINAL SUBDIVISION (WHEN NO SITE PLAN IS REQUIRED FOR THE PROPOSED USE) (2)
- G. FINAL SUBDIVISION [ (3) WHEN B ABOVE HAS BEEN COMPLETED OR (0) WHEN C ABOVE HAS BEEN COMPLETED ]
- H. SITE PLAN (WHEN PRELIMINARY/FINAL SUBDIVISION HAS ALREADY BEEN APPROVED) (3)
- I. SITE PLAN (WHEN NO SUBDIVISION IS REQUIRED OR PROPOSED) (2)
- J. GRADING PERMIT APPLICATION (WHEN NO SUBDIVISION OR SITE PLAN IS REQUIRED OR PROPOSED) (2)
- K. GRADING PERMIT (FOR SITES WHERE SUBDIVISION AND SITE PLANS HAVE BEEN APPROVED) (0)
- L. SEDIMENT CONTROL PERMIT (WHEN NO SUBDIVISION OR SITE PLANS ARE REQUIRED OR PROPOSED) (2)
- M. SEDIMENT CONTROL PERMIT (WHEN SUBDIVISION OR SITE PLANS HAVE BEEN APPROVED) (0)
- N. PUD PRELIMINARY DEVELOPMENT PLAN (1)
- O. PUD FINAL DEVELOPMENT PLAN (2 OR 3)

FOREST CONSERVATION ORDINANCE REQUIREMENT

- (0) NO FOREST CONSERVATION ORDINANCE REQUIREMENT
- (1) PRELIMINARY FOREST CONSERVATION PLAN
- (2) PRELIMINARY AND FINAL FOREST CONSERVATION PLAN
- (3) FINAL FOREST CONSERVATION PLAN

F. Nontidal Wetlands. A regulated activity under the local program is subject to the following requirements:

- (1) Nontidal wetlands shall be considered to be priority areas for forest retention and replacement.
- (2) Forested nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to forested nontidal wetlands and to avoid delay in the approval process.
- (3) For the purposes of delineation, permitting, and mitigation, areas determined to be nontidal wetlands under COMAR 08.05.04 shall be regulated under COMAR 08.05.04 or this Ordinance, whichever is more stringent.
- (4) For the purpose of calculating reforestation mitigation under this Ordinance, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 shall be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

G. All forest conservation plans shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in C.O.M.A.R. 08.19.06.01.

6.2 PRELIMINARY FOREST CONSERVATION PLAN.

A. A preliminary forest conservation plan shall:

- (1) Be submitted according to the guidance provided in Section 6.1 E;

- (2) Include the approved forest stand delineation for the site as specified in Article 5;
- (3) Include a table that lists the following, in square feet:
  - (a) Net tract area,
  - (b) Area of forest conservation required, and
  - (c) Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas according to the standards contained in Articles 7, 8 or 9, whichever is applicable;
- (4) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;
- (5) Include an explanation of how the provisions of Section 6.1 A and B of this article have been met;
- (6) In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;
- (7) Include a proposed construction timetable showing the sequence of forest conservation procedures;
- (8) Show the proposed limits of disturbance;
- (9) Show proposed stockpile areas;
- (10) Incorporate a proposed 2-year installation and maintenance agreement that shows how areas designated for afforestation or reforestation will be installed and maintained to ensure protection and satisfactory establishment and indicates the responsible parties;
- (11) Information required in the Washington County Forest Conservation Technical Manual; and
- (12) Other information the Department determines is necessary to implement this Ordinance.
- (13) Be drawn at the same scale as the plan it accompanies.

### 6.3 FINAL FOREST CONSERVATION PLAN

A. A final forest conservation plan shall:

- (1) Be submitted according to the guidance provided in Section 6.1 E;
- (2) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- (3) In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
- (4) Incorporate a binding 2-year installation and maintenance agreement as applicable and described in C.O.M.A.R. 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
  - (a) Watering, and
  - (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the Washington County Forest Conservation Technical Manual;
  - (c) An indication of the parties responsible for installation and maintenance of the site including a current phone number and address.
  - (d) A statement that the two year maintenance period shall not begin until after it has been determined by Washington County that the afforestation or reforestation have been completed according to the approved Forest Conservation Plan.
- (5) Show the amount of financial security to be provided before issuance of a Use and Occupancy permit, determined according to the guidelines contained in Article 13;
- (6) Incorporate a long-term binding protective agreement as applicable and described in C.O.M.A.R. 08.19.05.02 that:

- (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention,
  - (b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest; and
  - (c) Must be recorded in the Land Records of Washington County with or on the final plat of subdivision or, in cases where no subdivision occurs, as a covenant or other form of deed restriction.
- (7) Include the substantive elements required under Section 6.2A(2)–(5), (7)–(9), and (11) of this article, as finalized elements of the forest conservation plan; and
- (8) Other information the Department determines is necessary to implement this Ordinance.

**B. REVIEW TIME SPECIFIED**

- (1) Within 45 calendar days after receipt of the final forest conservation plan, the Department shall notify the applicant whether the forest conservation plan is complete and approved.
- (2) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
- (3) The Department may require further information and extend the deadline in 15 calendar day increments under extenuating circumstances with appropriate notice to the applicant.
- (4) At the request of the applicant, the Department may extend the deadline in 15 calendar day increments under extenuating circumstances.

**C. The Department's review of a final forest conservation plan shall be concurrent with the review of the plan it accompanied.**

**D. CORRECTIVE ACTION PERMITTED**

- (1) The Department may revoke an approved forest conservation plan if it finds that:
  - (a) A provision of the plan has been violated;
  - (b) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact;
  - (c) Changes in the development or in the condition of the site necessitate preparation of a new or amended plan;
  - (d) The availability of new information that was not known at the time of the original review and approval necessitates preparation of a new or amended plan; or
  - (e) The plan does not accomplish the purpose of this Ordinance.
- (2) The Department or its designate may issue a stop work order against a person who violates a provision of this Ordinance or a regulation, order, approved forest conservation plan, or maintenance agreement.
- (3) Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for correction.

#### **ARTICLE 6A EXPRESS PROCEDURES**

##### **6A.1 PURPOSE AND INTENT**

- A. The purpose of an Express Procedure is to provide an alternate review and approval mechanism which will allow certain development activities to meet the intent of the Forest Conservation Ordinance through a review and approval process that is proportionate to the impact on forest resources.
- B. The Express Procedure allows the combination of the various steps in the review process that are described as separate in this Ordinance. It will not require documentation of a progression through the sequence of priorities for afforestation and

reforestation.

- C. Certain development activities, such as those described in the eligibility standards contained in this article, result in small afforested or reforested areas that may not be located in priority areas and provide little or no real benefit to improvements in water quality. The goal of the Express Procedure is to create significant sized forest stands in priority areas where they will provide real benefits to improvements in water quality. This will occur through the aggregation and accumulation of payment in lieu of fees. The funds are expended by Washington County on a schedule and in locations that will more closely meet the intent and purpose of this Ordinance.

#### 6A.2 ELIGIBILITY TO USE EXPRESS PROCEDURE

- A. An application must meet the following criteria in order to use the Express Procedure.
  - (1) Subdivisions of 5 lots or less when the afforestation or reforestation requirement as calculated from the worksheet is 2 acres or less or;
  - (2) Where no subdivision is proposed, when the afforestation or reforestation requirement as calculated from the worksheet is 2 acres or less; and
  - (3) There is no disturbance proposed in those priority areas described in Article 8, Sections 8.1A, C, D, E or F or in Article 10, Sections 10.2A, 1, 2, 4, 5, 6, or 7.

#### 6A.3 THE EXPRESS PROCEDURE

- A. If the eligibility criteria are met the applicant may choose to use the Express Procedure without prior approval by the department.
- B. Nothing in this section shall prevent the applicant from using the procedures described elsewhere in this Ordinance.
- C. The Forest Stand Delineation may be prepared in the simplified format as described in Section 5.3. In addition, the Forest Stand Delineation shall identify those areas described in Section 6A.2A.3.
- D. The Forest Stand Delineation and Forest Conservation Plan may be submitted, reviewed and approved concurrently with the applicable subdivision or site plan.

- E. The net tract area as requested on the worksheet and upon which calculations are based to determine afforestation and reforestation requirements shall be equal to the area of the proposed subdivided lots or the area of the entire parcel to be developed when no subdivision is proposed.
- F. The applicant may select the payment in lieu of fee to meet the requirements of afforestation or reforestation without prior approval by the Planning Commission.
- G. The payment in lieu of fee shall be paid prior to final approval of the subject subdivision or site plan.

**6A.4 ADDITIONAL GUIDELINES**

- A. After an applicant has chosen to use the Express Procedure for an eligible subdivision, the remaining land of the original parcel is not eligible to use the procedure again. It shall be subject to the requirements of this Ordinance as if the Express Procedure did not exist.
- B. Upon a request from the applicant, the Planning Commission or its designee may determine that further use of the Express Procedure for additional subdivision or development on the remaining land is appropriate.
- C. Where the Express Procedures described in this article vary from those described elsewhere in this Ordinance, the Express Procedures may be followed without violation of the Ordinance as long as the subdivision or site development proposal meets the eligibility requirements.

**ARTICLE 7 AFFORESTATION**

7.1 A person making application for a regulated activity as defined herein after the effective date of this Ordinance shall:

- A. Conduct afforestation on the lot, tract or parcel in order to produce the minimum amount of forest cover specified below that corresponds to the land use proposed for the site.

LAND USE PROPOSED

MINIMUM FOREST COVER

AGRICULTURAL AND RESOURCE (As defined in Section 2.3 of this Ordinance)	20% OF NET TRACT AREA
SPECIAL PLANNING AREAS (As defined in Section 2.58 of this Ordinance)	20% OF NET TRACT AREA
MEDIUM DENSITY RESIDENTIAL (As defined in Section 2.37 of this Ordinance)	20% OF NET TRACT AREA
HIGH DENSITY RESIDENTIAL (As defined in Section 2.27 of this Ordinance)	15% OF NET TRACT AREA
PUD'S (As defined in Section 2.49 of this Ordinance)	15% OF NET TRACT AREA
COMMERCIAL AND INDUSTRIAL (As defined in Section 2.10 of this Ordinance)	15% OF NET TRACT AREA
INSTITUTIONAL DEVELOPMENT (As defined in Section 2.30 of this Ordinance)	15% OF NET TRACT AREA

- B. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Section 7.1(A) of this article:
- (1) The required afforestation shall be determined by the amount of forest existing before cutting or clearing begins; and
  - (2) Forest cut or cleared from a site which requires afforestation to meet the minimums specified in Section 7.1 A above shall be reforested at a 2 to 1 ratio and added to the afforestation determined necessary in B 1 above.

**ARTICLE 8 PRIORITIES FOR RETENTION**

8.1. The following trees, shrubs, plants, and specific areas are considered priorities for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that ~~reasonable efforts have been made to protect them and the project or development plan cannot be reasonably altered~~ the applicant qualifies for a variance under Article 15 of this Ordinance:

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- A. Trees, shrubs, and plants located within the 100-year floodplain, intermittent and perennial stream buffers, on steeply sloped areas, nontidal wetlands, and critical habitats;
- B. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- C. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
  - (1) The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531--1544 and in 50 CFR Part 17,
  - (2) The Maryland Non-game and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01--10-2A-09, Annotated Code of Maryland, and
  - (3) COMAR 08.03.08; (Threatened and endangered species)
- D. Trees that are part of an historic site listed in the Washington County Historic Sites Survey or in the National Register of Historic Places; and
- E. Have been designated by the State or the Department as a national, State, or county champion tree; and
- F. Any tree having a diameter measured at 4.5 feet above the ground of:
  - (1) 30 inches or more; or
  - (2) 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources and contained in Appendix N of the Washington County Forest Conservation Technical Manual.

**ARTICLE 9 REFORESTATION**

9.1 FOREST CONSERVATION THRESHOLD.

- A. There is a forest conservation threshold established for all land use categories, as provided in Subsection B of this article. The forest conservation threshold is the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4

acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

- B. After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted, the forest conservation plan shall provide for reforestation or payment into the forest conservation fund according to the formula set forth in Section 9.1 C of this article and consistent with Section 6.1 of this article, and the following forest conservation thresholds for the applicable land use category:

<u>CATEGORY OF USE</u>	<u>THRESHOLD PERCENTAGE</u>
AGRICULTURAL AND RESOURCE AREAS (As defined in Section 2.3 of this Ordinance)	50 %
SPECIAL PLANNING AREAS (As defined in Section 2.58 of this Ordinance)	50 %
MEDIUM DENSITY RESIDENTIAL AREAS (As defined in Section 2.37 of this Ordinance)	25 %
INSTITUTIONAL DEVELOPMENT AREAS (As defined in Section 2.30 of this Ordinance)	20 %
HIGH DENSITY RESIDENTIAL AREAS (As defined in Section 2.27 of this Ordinance)	20 %
PUD'S (As defined in Section 2.49 of this Ordinance)	15 %
COMMERCIAL AND INDUSTRIAL USE AREAS (As defined in Section 2.10 of this Ordinance)	15 %

C. CALCULATIONS

- (1) All existing forest cover, measured to the nearest 1/10th acre, cleared from the net tract area above the applicable forest conservation threshold shall be reforested at a ratio of 1/4 acre planted for each acre removed.
- (2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested

under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Washington County Forest Conservation Technical Manual.

- (3) All existing forest cover, measured to the nearest 1/10th acre, cleared from the net tract area below the applicable forest conservation threshold shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold.

## **ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION**

### 10.1 PREFERRED SEQUENCE OF TECHNIQUES FOR MITIGATION

- A. After all techniques for retaining existing forest on the site have been exhausted, the preferred sequence of techniques for afforestation and reforestation is as follows:
  - (1) Selective clearing and supplemental planting on site;
  - (2) Onsite afforestation or reforestation using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
  - (3) Onsite afforestation or reforestation, using whip and seedling stock;
  - (4) Offsite afforestation or reforestation, arranged by the applicant on private lands using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
  - (5) Offsite afforestation or reforestation arranged by the applicant on public lands using transplanted or nursery stock that is greater than 1.5 Inches diameter measured at 4.5 feet above the ground;
  - (6) Offsite afforestation or reforestation, arranged by the applicant on private lands using whip and seedling stock;
  - (7) Offsite afforestation or reforestation, arranged by the applicant on public lands using whip and seedling stock;

- (8) Landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area;
- (9) Natural regeneration on site.
- (10) Off site protective easement on existing forested areas as identified on an approved Forest Stand Delineation that incorporates a long-term binding protective agreement, as applicable and described in C.O.M.A.R. 08.19.05.02 that:
  - (a) Provides protection in perpetuity for areas of forest conservation, including areas of afforestation, reforestation, and retention;
  - (b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including passive recreational activities and forest management practices that are used to preserve forest;
  - (c) Is recorded in the Land Records of Washington County with or on the final plat of subdivision or, in cases where no subdivision occurs, as a covenant or other form of deed restriction, and, if applicable includes the signature of both parties to the agreement; and
  - (d) Is located on a single lot of record.
  - (e) Credit for an off site protective easement may not exceed 50% of the area of existing forest cover protected.
- (11) Payment of fee in lieu instead of afforestation and reforestation according to Article 11.

C. B. Within the Hagerstown Urban Growth Area and Town Growth Areas, after all on-site priority areas listed in Article 8.1 have been shown to be protected by forest conservation easements, the following sequence for afforestation or reforestation may be used toward meeting forest requirements as part of a final Forest Conservation Plan :

- (1) Forest creation using transplanted or nursery stock,

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(2) Planting street trees according to the approved tree list may be granted full credit as a mitigation technique.

B. C. A sequence other than the one described in Subsection A of this article may be used for a specific project, if necessary, to achieve the objectives of this Ordinance or other Washington County land use policies, or to take advantage of opportunities to consolidate forest conservation efforts. An alternate sequence must be approved by the Planning Commission.

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G. D. Native plant materials shall be used unless otherwise permitted by the Department.

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#### 10.2 PREFERRED SEQUENCE OF PRIORITY AREAS FOR AFFORESTATION OR REFORESTATION

A. The following is considered the preferred sequence of priority areas for afforestation and reforestation:

- (1) Establish or enhance forested buffers adjacent to intermittent and perennial streams;
- (2) Establish forest buffers in nonforested areas on 100-year floodplains, when appropriate and permitted by the Washington County Floodplain Management Ordinance;
- (3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site. Where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- (4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
- (5) Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
- (6) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;

- (7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

### 10.3 TIME PERIOD SPECIFIED

- A. A person required to conduct afforestation or reforestation under this article shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following Forest Conservation Plan approval, and before development project completion.
- B. The time period may be increased for good cause by the Department.

## **ARTICLE 11 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION**

### 11.1 FOREST CONSERVATION FUND.

- A. There is established the Washington County Forest Conservation Fund.
- B. If a person subject to this Ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation cannot be reasonably accomplished, or the person is eligible to use the Express Procedure as described in Article 6A, the person shall contribute money into the Washington County Forest Conservation Fund. The amount of the contribution shall be determined by application of a square footage rate to the area of required planting as determined in the forest conservation plan or on the forest conservation worksheet. The rate shall be periodically established by the County Commissioners for Washington County, Maryland by resolution.
- C. The Department shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- D. When an applicant is eligible to use the Express Procedure described in Article 6A, the decision to select the payment in lieu of afforestation or reforestation shall not require prior approval by the Department.
- E. Money contributed instead of afforestation or reforestation under this article shall be paid prior to the issuance of a permit to begin the construction activity.

- F. Washington County shall accomplish the reforestation or afforestation for which the money is deposited according to the priorities and standards contained in this Ordinance within 2 years or three growing seasons, whichever is a greater time period, after receipt of the money or after completion of the project, whichever is later.
- G. The time period specified in F above may be extended one time for an additional 1 year or two growing seasons by Washington County with appropriate notification to the person who contributed the money.
- H. Money contributed under this article shall remain in the account and shall not be returned.
- I. Money deposited in the Washington County Forest Conservation Fund:
  - (1) Shall be spent on the costs directly related to afforestation and reforestation, including but not limited to site identification, acquisition, and preparation, the acquisition of planting stock, compensation to persons engaged in the planting activity, ~~and maintenance of existing forests, and achieving urban growth area tree canopy goals.~~
  - (2) Shall be identified as being for afforestation and reforestation so as not to be confused with funds collected as penalties which may be used for other purposes as specified in Section 16.1 B.
  - (3) Shall not revert to the general fund.
  - (4) Shall not be utilized outside the boundaries of Washington County.

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**ARTICLE 12 RECOMMENDED TREE SPECIES**

**12.1 RECOMMENDED TREE SPECIES LIST.**

- A. Tree species used for afforestation or reforestation should be native to Washington County, when appropriate and possible, and selected from the list of species approved by the Department and contained in the Washington County Forest Conservation Technical Manual Appendix.

**ARTICLE 13 SURETY**

13.1 A person shall be required to furnish a financial surety, unless exempt by the Department, to assure that the afforestation, reforestation and maintenance are conducted according to the approved forest conservation plan.

- A. A surety, as required in this Ordinance, is for the purpose of securing financial resources from the applicant to conduct the afforestation, reforestation and required maintenance according to the approved forest conservation plan if the applicant is unable to or fails to do so.

13.2 AMOUNT AND FORM OF SURETY

- A. The surety shall be in an amount equal to the cost, as estimated by the applicant and approved by the Department, of the required afforestation, reforestation, and maintenance during the 2 year period covered by the agreement, plus a 15% contingency reserve.
- B. The surety shall be in a form and of a content approved by the Department.
- C. The surety shall be provided prior recordation of an approved subdivision plat or issuance of a building permit, whichever is earlier and applicable.

13.3 RELEASE OF SURETY

- A. The surety may be released partially or completely.
- B. The Department shall have sole authority to determine when a surety shall be released and whether it shall be a partial or complete release.
- C. The surety shall not be completely released until the afforestation and reforestation are completed, the 2 year installation and maintenance agreement has expired and the establishment of the required forest cover is determined by the Department to meet the intent of the approved forest conservation plan and this Ordinance.
- D. The surety may be partially released upon written request from the applicant and consideration of the remaining afforestation or reforestation to be completed and the success of the maintenance performed to date.

**ARTICLE 14 TREE PROTECTION DEVICES**

14.1 Standards for the protection of trees from construction activity are provided in the Washington County Forest Conservation Manual.

14.2 Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this article, the applicant shall demonstrate to the Department, or its designate, that protective devices have been established.

14.3 On sites with forest retention, signs, and other protective devices shall be installed within 30 days of subdivision plat approval, and the Department shall be notified for inspection.

**ARTICLE 15 VARIANCES**

15.1 PROCEDURE

- A. A person may request and the Planning Commission may grant a variance where, owing to the special features of the applicant's property or other circumstances, the standards or requirements of this Ordinance would result in unwarranted hardship to the applicant.
- B. No variance shall be granted by the Planning Commission except upon a finding that the relief granted is consistent with the spirit and intent of the Forest Conservation Act and that the relief granted will not adversely affect water quality.
- C. Upon receiving a request for a variance, the Department shall, within a reasonable time, schedule the matter for consideration and action on the agenda of a Planning Commission meeting. The applicant shall be given due notice. Any party may appear at the meeting.
- D. In granting a variance, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when expressly made a part of the terms under which a variance is granted, shall be deemed a violation of this Ordinance.
- E. Notice of request for a variance shall be given to the Department of Natural Resources within 15 days of receipt by the Planning Commission.

- F. There is established by this Ordinance the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial, or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article, §5-1601, et. seq., Annotated Code of Maryland, or this Ordinance.

**ARTICLE 16 ENFORCEMENT**

**16.1 NONCOMPLIANCE FEES**

- A. A person found to be in noncompliance with this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2-year installation and maintenance agreement, shall be assessed by the Department a penalty in an amount established by resolution of the Board of County Commissioners for Washington County.
- B. Money collected under Section 16.1 of this article shall be deposited in the Forest Conservation Fund as required by Article 11 of this Ordinance, and may be used by the Department for purposes related to implementation and administration of this Ordinance, including but not limited to the acquisition of land or planting stock, personnel salaries and benefits, supplies and training.
- C. Noncompliance fees shall be identified as such in the Forest Conservation Fund and need not be returned.

**16.2 VIOLATIONS**

- A. Any person found to have violated any provision of this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2-year installation and maintenance agreement shall be liable for a penalty not to exceed \$1,000, which may be recovered in a civil action brought by the Department or the Board of County Commissioners for Washington County. Civil actions arising under this subsection shall be prosecuted pursuant to Section 26.2.1(b) through (n) of the Zoning Ordinance for Washington County, Maryland.
- B. Each day a violation continues is a separate violation of this Ordinance, regulations adopted under this Ordinance, the approved

forest conservation plan, or the associated 2-year installation and maintenance agreement.

- C. In addition to any other remedies provided for by law, the Board of County Commissioners for Washington County or the Department may institute legal proceedings to compel compliance, including but not limited to restoration and reforestation of an area, with the provisions of this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2-year installation and maintenance agreement.
- D. The Department or the Board of County Commissioners for Washington County may issue a stop work order against any person who violates any provision of this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2-year installation and maintenance agreement.
- E. The Department or the Board of County Commissioners for Washington County may revoke an approved forest conservation plan for cause, including violation of conditions of the plan, obtaining a plan approval by misrepresentation, failing to disclose a relevant or material fact, or a change in conditions. The Department shall notify, in writing by certified and first class mail, the owner or the person responsible for such violation indicating the nature of the violation and specifying the corrective measures required to be undertaken by a specific date. Upon the written request of the owner or person responsible, the Department shall hold a hearing to reconsider the revocation of the plan.
- F. Penalties paid as a result of a civil action brought by the Department shall be deposited in the Forest Conservation Fund and may be used by the Department for purposes related to the implementation and administration of this Ordinance as set forth in this Article.

#### **ARTICLE 17 ANNUAL REPORT**

- 17.1 On or before July 1 of each year, the Department shall submit to the Maryland Department of Natural Resources a report on:
  - A. The number, location, and type of projects subject to the provisions of this Ordinance;

- B. The amount and location of acres cleared, conserved, and planted in connection with a development project;
  - C. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
  - D. The costs of implementing the Forest Conservation Program.
- 17.2 The annual report shall be accompanied by a letter of transmittal signed by the Washington County official responsible for administration of the program.

**ARTICLE 18 AMENDMENTS**

- 18.1 This Ordinance may be amended by the Board of County Commissioners for Washington County.
- A. A person other than the Board of County Commissioners for Washington County may request amendment to this Ordinance by submitting the request to the Department in writing.
  - B. All amendments are subject to approval by the Department of Natural Resources.
  - C. Washington County shall demonstrate to the Department of Natural Resources that an amendment is as or more stringent than the provisions of Natural Resources Article, §5-1601, et seq., Annotated Code of Maryland.
  - D. All amendments to this Ordinance shall be evaluated according to the following procedure:
    - (1) The Board of County Commissioners for Washington County shall hold at least one public hearing at which parties in interest and citizens shall have the opportunity to be heard.
    - (2) Notice of the time and place of the public hearing, together with a summary of the proposed amendment shall be published in at least one (1) newspaper of general circulation in the jurisdiction once each week for two (2) successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.
    - (3) The amendment, if approved, may not become effective until at least 10 days after the hearing.

- (4) The Department shall provide an analysis of the purpose and effects of the proposed amendment and the results of the public hearing to the Board of County Commissioners for Washington County before action on the amendment.
- (5) The Department shall provide notice to the Department of Natural Resources of the final action on the amendment.

#### **ARTICLE 19 FEES**

19.1 When a Forest Stand Delineation or Forest Conservation Plan is determined to be required according to this Ordinance, the Board of County Commissioners for Washington County shall establish, by resolution, fees for services rendered in connection with this Ordinance.

- A. The Forest Conservation Plan Review Fee shall be paid at the same time as the subdivision, site plan, grading plan, or sediment control plan fee, whichever is first applicable.
- B. Forest Conservation Plan Review Fees may be deposited in the Washington County General Fund and may be used for any purpose in the implementation of this Ordinance.