Board of County Commissioners of Washington County, Maryland

Agenda Report Form

Open Session Item

SUBJECT: PUBLIC HEARING: Application for Forest Conservation Ordinance Text Amendment FCO-26-001

PRESENTATION DATE: November 10, 2026

PRESENTATION BY: Travis Allen, Senior Planner, Department of Planning and Zoning

RECOMMENDED MOTION: No motion is needed at this time. The purpose of this public hearing is to take public comment on the rezoning application.

REPORT-IN-BRIEF: Application is being made to amend multiple sections of the Forest Conservation Ordinance (FCO) to comply with the requirements of Maryland Senate Bill 256 (SB 256) and to provide clarification of existing regulations currently found in the FCO to meet the intent of Maryland's Forest Conservation Act (FCA).

DISCUSSION: The proposed amendments are primarily mandated by SB 526, passed in 2023. Subsequent amendments under HB1511 required that most changes under the original bill be adopted by counties by July 1, 2026. In addition to the state-mandated changes to the FCO, additional changes have been proposed by staff to text in the Ordinance. These changes are necessary to modernize our Ordinance, as it has never been comprehensively amended since its adoption locally in 1993.

This item was presented to the Washington County Planning Commission at a Public Information Meeting held during their regular meeting on June 1, 2026. It was then brought back for recommendation at the July 6, 2026 meeting, where the members unanimously voted in favor of the approval of the proposed amendments.

FISCAL IMPACT: N/A

CONCURRENCES: Washington County Planning Commission

ALTERNATIVES: N/A

ATTACHMENTS: Staff Report and Analysis
Proposed Text Amendments
Planning Commission Recommendation
Planning Commission Minutes

AUDIO/VISUAL NEEDS: none

Washington County
MARYLAND

DEPARTMENT OF PLANNING & ZONING
PLANNING | ZONING | LAND PRESERVATION | FOREST CONSERVATION | GIS

July 20, 2026 FCO-26-001

APPLICATION FOR AMENDMENT TO THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE PLANNING COMMISSION RECOMMENDATION

RECOMMENDATION

The Washington County Planning Commission held a rezoning public input meeting on June 1, 2026 for the purpose of considering amendments to the Washington County Forest Conservation Ordinance, Articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20 and 21.

The Planning Commission considered the application, proposed amendments, Staff Report & Analysis, as well as both oral and written public comments. The Planning Commission then took action at its July 6, 2026 meeting to recommend, to the Board of County Commissioners, approval of the amendments.

Copies of the application packet, proposed amendments, Staff Report and Analysis, and minutes of the June 1, 2026 public rezoning input meeting and the July 6, 2026 regular meeting are attached.

Respectfully submitted,

Alyssa Sabetto
Director, Washington County Dept. of Planning & Zoning

FOR PLANNING COMMISSION USE ONLY
Rezoning No. _____
Date Filed: _____

WASHINGTON COUNTY PLANNING COMMISSION
ORDINANCE TEXT AMENDMENT APPLICATION

Washington County Board of County Commissioners
Applicant

□Property Owner □Contract Purchaser
□Attorney □Consultant
■Other: Elected Body

100 W. Washington St., Hagerstown, MD
Address

John Barr, President
Primary Contact

240-313-2200
Phone Number

100 W. Washington St., Hagerstown, MD
Address

contactcommissioners@washco-md.net
E-mail Address

□ Adequate Public Facilities Ordinance
■ Forest Conservation Ordinance
□ Subdivision Ordinance
□ Solid Waste Plan
□ Water and Sewer Plan
□ Zoning Ordinance
□ Other _____

Section No. Articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 21

Please provide the proposed text on a separate sheet of paper as follows: strike-through should be used for deletions [~~deletions~~], unchanged wording in regular type, and new wording should be underlined [new wording].

_____
Applicant's Signature

Subscribed and sworn before me this_____day of_____, 20_____.

My commission expires on_____

_____
Notary Public

FOR PLANNING COMMISSION USE ONLY

□ Application Form
□ Fee Worksheet
□ Application Fee
□ Proposed Text Changes
□ 30 copies of complete Application

WASHINGTON COUNTY, MARYLAND

FOREST CONSERVATION ORDINANCE

Revision 8

Adopted and Effective _____, 2026

TABLE OF CONTENTS

ARTICLE 1 PURPOSE 1
ARTICLE 2 DEFINITIONS 1
ARTICLE 3 APPLICATION 15
ARTICLE 4 GENERAL REQUIREMENTS 21
ARTICLE 5 FOREST STAND DELINEATION 23
ARTICLE 6 FOREST CONSERVATION PLAN 26
ARTICLE 6A EXPRESS PROCEDURES 33
ARTICLE 7 AFFORESTATION 35
ARTICLE 8 PRIORITIES FOR RETENTION 37
ARTICLE 9 REFORESTATION 39
ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION 41
ARTICLE 11 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION 46
ARTICLE 12 RECOMMENDED TREE SPECIES 48
ARTICLE 13 SURETY 48
ARTICLE 14 TREE PROTECTION DEVICES AND SITE WORK 50
ARTICLE 15 VARIANCES 51
ARTICLE 16 ADMINISTRATION AND ENFORCEMENT 53
ARTICLE 17 ANNUAL REPORT 56
ARTICLE 18 AMENDMENTS 57
ARTICLE 19 FEES 58
ARTICLE 20 FOREST MITIGATION BANKS 59
ARTICLE 21 BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES 65

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 and corresponds to Washington County Zoning Classifications A, EC and P.

2.4 "Applicant"

A person as defined in Section 2.49 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 “Best Management Practice (BMP).”

Conservation practices or systems of practices and management measures that:

A. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

B. Minimize adverse impacts to the surface water, groundwater flow and circulation patterns, and to their chemical, physical, and biological characteristics.

2.7 "Caliper"

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

2.8 "Champion tree"

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

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, HI, ORT, PB, RB, RV, SED, IG, , PI, AP, IM and IR.

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. 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.

1. Is for certain activities exempted under this Ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland;

2. Does not circumvent the requirements of this Ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland; and

3. Does not conflict with the purposes of any other declaration of intent;

B. The document required under COMAR 08.19.01.05 or this Ordinance

2.15 “Degraded Forest”

A forest ecosystem that has lost its natural structure, function, and/or diversity due to human activity or other disturbances, leading to diminished capacity to regenerate and provide ecosystem services.

2.16 "Department"

The Washington County Department of Planning and Zoning.

2.17 "Development Project"

The grading, construction, or redevelopment activities occurring on a specific tract of land where the tract of land is 20,000 square feet or greater.

2.18 "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 mixed use development, has been completed.

2.19 “Disturbance”

Any activity on a development site requiring the cutting of trees, clearing, grading, grubbing, excavating, filling, or otherwise modifying the existing topography or forested features.

2.20 “Easement”

A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which is included in the conveyance of land.

2.21 "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.

2.22 "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.

2.23 "Forest conservation"

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

2.24 "Forest Conservation and Management Agreement"

An agreement as applicable and described in Tax-Property Article, §8-211, Annotated Code of Maryland..

2.25 "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.

2.26 "Forest cover"

The area of a site meeting the definition of forest.

2.27 "Forest management plan"

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

2.28 “Forest Mitigation Bank”

An area of land which has been intentionally afforested or reforested or has existing forest protected by the application of a permanent easement for the express purpose of providing forest mitigation credits.

2.29 “Forest Mitigation Bank Agreement”

An agreement between an individual owning a Forest Mitigation Bank and Washington County which commits the banker to certain procedures and requirements for maintenance and protection when creating and operating the Forest Mitigation Bank.

2.30 “Forest Mitigation Bank Credit Transaction Notice”

Method of tracking acreage deductions resulting from the sale of credits in a legally established forest mitigation bank to meet the forest mitigation requirements for a development project that shall be recorded in land records prior to final forest conservation plan approval.

2.31 “Forest Mitigation Bank Plan”

A plan submitted for approval of a Forest Mitigation Bank to the Washington County Department of Planning and Zoning or Planning Commission by an individual proposing to establish a forest mitigation bank.

2.32 "Forest stand delineation"

An accurate scaled drawing containing all of the information required by Article 5 of this Ordinance as well as the Washington County Forest Conservation Technical Manual 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.

2.33 "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).

2.34 “Hardship”

The inability of a person to successfully comply with the provisions of this Ordinance relative to any regulated activity as a result of specific conditions existing on that site that severely restrict opportunities for mitigation while at the same time do not achieve the goals of this Ordinance.

2.35 "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.

2.36 "Impervious surface"

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

2.37 "Immediate family member"

The owner of the property or a child of the owner.

2.38 "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.

2.39 "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.

2.40 "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.

2.41 “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.

2.42 "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.

2.43 "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.”

2.44 "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.

2.45 "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.

2.46 “Minor Subdivision”

As defined in the subdivision Ordinance, a subdivision of 7 lots or less.

2.47 “Mixed Use Development”

Development permitted in the MXR, MXC and MXE floating zones described in the Washington County Zoning Ordinance and characterized by a combination of different types of residential, commercial and employment-focused uses and arranged on the site according to a comprehensive development plan..

2.48 "Natural regeneration"

The natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre at the end of the 3-year maintenance period, which are capable of reaching a height of at least 20 feet at maturity.

2.49 "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 non-forested areas, to the nearest 1/100th 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 developed areas covered by impervious surface and located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval are exempt. Previously mitigated areas are also exempt.

2.50 "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.

2.51 "Offsite"

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

2.52 "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.

2.53 “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.

2.54 "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.

2.55 "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.

2.56 "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.”

2.57 "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, as confirmed by field verification.

2.58 "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.

.

2.59 Planted Green Infrastructure”

The implementation of natural systems in man-made environments to imitate and/or replicate natural forest processes.

2.60 “Priority Funding Area”

An area defined by the State of Maryland or Washington County according to predetermined guidelines under State Finance and Procurement Article, §5-7b-02, Annotated Code of Maryland for the purpose of targeting growth and economic development through economic incentives.

2.61 "Public utility"

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

2.62 “Qualified Conservation”

The conservation of all or part of an existing forest that:

A. Has been approved by the appropriate State of local forest conservation program for the purpose of establishing a forest mitigation bank; and

B. Is encumbered in perpetuity by a restrictive easement, covenant, or another similar mechanism recorded in the county land records to conserve its character as a forest.

2.63 "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. Reforestation for a linear project involving overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

2.57 "Regulated activity"

Any of the following activities, when that activity occurs on a unit of land which is 20,000 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;

E. Incremental development involving regulated activities occurring at different times on a given tract, parcel or lot cumulatively exceeding 20,000 square feet in accordance with Article 3.1.

2.58 "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.

2.59 "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.

2.60 "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.

2.61 "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.

2.62 "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.

2.63 "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.

2.64 "Steep Slope"

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

2.65 "Stream"

As defined in the Washington County Subdivision Ordinance a perennial or intermittent stream identified in the most current soil survey for Washington County, Maryland and field verified when necessary.

2.66 "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. Stream buffer distance guidelines are defined in the Washington County Subdivision Ordinance. Buffers must be at least 50 feet from the stream channel along intermittent streams and at least 100 feet from the stream channel from perennial stream, measured from and perpendicular to the top of the stream bank.

2.67 "Stream restoration project"

An activity that:

A. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;

B. Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to the number removed by the project;

C. May be performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the State or local government to achieve or maintain water quality standards; and

D. Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

2.68 “Street Tree”

Trees selected from the approved street tree list that are a minimum of 1.5 inches in diameter at 4.5 feet above the ground and are planted in a linear fashion along a street rather than as a forest as defined in this ordinance.

2.69 "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.

2.70 "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.

2.71 “Town Growth Area”

An area encompassed by a Town Growth Area Boundary recommended by the Comprehensive Plan and further defined by urban zoning categories located proximate and surrounding certain incorporated towns in Washington County where growth and development is encouraged.

2.72 “Transit-Oriented Development”

A deliberately planned type of urban development that creates compact, mixed-use communities near transit where people enjoy easy access to jobs and services. "TOD" typically means development within a half-mile of a transit station or adjacent to a transit corridor which maximizes transit usage, walking, and bicycling.

2.73 "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.”

2.74 "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.

2.75 “Urban Growth Area”

An area encompassed by an Urban Growth Area Boundary recommended by the Comprehensive Plan and further defined by urban zoning categories located proximate and surrounding the corporations of Hagerstown, Funkstown and Williamsport growth and development and investment and improvement in public infrastructure is encouraged.

2.76 "Variance"

A relaxation of the requirements or standards of this Ordinance.

2.77 "Washington County Forest Conservation Technical Manual"

The Maryland Department of Natural Resources’ *Forest Conservation Technical Manual, Fourth Edition, 2024* 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.

2.78 "Watershed"

A contiguous area of land, described as a subbasin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08, bounded by surface elevations that cause the water to flow naturally to the lowest elevation within the boundary.

2.79 "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.

2.80 “Worksheet”

The official set of forest mitigation data calculated to the nearest one-hundredth acre, defining the size of the net tract area together with the required forest calculations prepared in accordance with this chapter.

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 2.49 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 20,000 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.

C. A unit of county or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas 20,000 square feet or greater.

D. Incremental development involving regulated activities occurring at different times on a given tract, parcel or lot cumulatively exceeding 20,000 square feet in accordance may be tracked cumulatively for forest mitigation purposes.

3.2 This Ordinance does not apply to:

A. A person as defined in Section 2.49 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 20,000 square feet, except as per Article 3.1D.

B. A person as defined in Section 2.49 making application for a simplified subdivision as described in Section 318 of the Washington County Subdivision Ordinance.

C. A person as defined in Section 2.49 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 immediate family member of the owner, if the activity:

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

(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 immediate family member(s) and the relationship to the owner, and that transfer of ownership to a person or persons who are not immediate family members of the owner within 5 years of the date of the declaration may result in a loss of exemption;

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

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 20,000 square feet of forest; and

(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 5 years of the date of filing of the declaration of intent.

F. Agricultural activities that do not result in a change in land use category, including the operation of orchards and tree farms and the construction and use of agricultural support buildings and other related structures built using accepted best management practices. A person engaging in an agricultural activity that causes clearing of 20,000 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 5 years from the date of the declaration; and

(2) A sketch map of the property which shows the area to be cleared.

G. 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.

H. Highway construction activities governed under Natural Resources Article, §5-103, Annotated Code of Maryland.

I. The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under Public Utility Companies §§7-207 and 7-208 or 7-205, 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.

J. Any 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;.

K. 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.

L. 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 5 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.

(3) Forest harvests within areas protected under an approved forest conservation plan shall meet the requirements specified in COMAR 08.19.05.02.

M. Noncoal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland.

N. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland.

O. The cutting or clearing of trees to comply with the requirements of:

(1) 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.

(2) The exemption does not apply to the cutting or clearing of trees to facilitate the expansion or extension of the boundaries of any airport or runway.

P. . An activity on a previously developed area covered by impervious surface and located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval.

Q. Any stream restoration project, as defined in Article 2, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner or owners.

R. Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.

S. The construction of a new federal government facility projected to house the employment of at least 2,500 persons;

T. Replats or other changes to previously approved lots not requiring subdivision

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 5 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 5 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 20,000 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 all 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 total acres of qualified forest, species, location, and size of trees and showing dominant and co-dominant forest types as well as all priority retention areas noted in Article 8;

a. Forest stands should be field sampled using the following Washington County Forest Conservation Technical Manual criteria: One plot per four acres of forest stand area; Two plots minimum per stand; and Three plots minimum for the total forested area of the site

(4) Narrative analysis including forest stand characteristics listed in 5.2D(3), site description, sampling methodology, sampling data sheets and the identification of priority forests and priority areas noted in Articles 8 and 10.2 of this Ordinance for forest retention, afforestation or reforestation.

(5) Location of 100-year floodplains as defined in the Washington County Floodplain Management Ordinance and all environmentally sensitive areas including non-tidal wetlands, intermittent streams and their buffers of at least 50 feet from the stream channel and perennial streams and their buffers of at least 100 feet from the stream channel.;

(6) Habitat supporting rare, threatened and endangered species as identified by the Maryland Department of Natural Resources Wildlife and Heritage Service;

(7) 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.

(4) The tract does not include any priority forests or priority areas as noted in Article 8.

B. The Department shall consider a simplified forest stand delineation complete if it includes:

(1) All requirements under Section 5.2D(1), (2), (5), (6) and (7) 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.

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.

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 Environment Article, Title 9, Annotated Code of Maryland 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 Environment Article, Title 9, Annotated Code of Maryland. 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 or 3-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) Include a depiction of all existing and planned utility easements on the site with reference to the beneficiary.

(12) Information required in the Washington County Forest Conservation Technical Manual; and

(13) Other information the Department determines is necessary to implement this Ordinance.

(14) 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 or 3-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, fertilizing, control of competing vegetation, protection from diseases, pests, mechanical injury 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 2 or 3-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.

(e) The binding installation and maintenance agreement and its inclusions noted in 4 a-d above shall be binding for a 3-year period when bare root or container grown whip or seedling stock is installed.

(5) Show the amount of financial security to be provided before approval of the final forest conservation plan, 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 that are not already protected in perpetuity 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.

(d) Contains signatures of any lien holders acknowledging the presence and terms of any easements contained in the plan

(7) Include the substantive elements required under Section 6.2A(2)–(5), (7)–(9), and (11)-(12) 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) At least 20 days before approval of the Forest Conservation Plan, the local authority shall:

(a) Provide notice that is consistent with local authority notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in Natural Resources Article, §5-1607, Annotated Code of Maryland; and

b. On a net tract area of at least 5 acres and if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval; or

c. For any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

2) Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent.

(3) 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.

(4) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.

(5) The Department may require further information and extend the deadline in 15 calendar day increments under extenuating circumstances with appropriate notice to the applicant.

(6) At the request of the applicant, the Department may extend the deadline in 15 calendar day increments under extenuating circumstances.

(7) A person petitioning for a judicial review of an approved forest conservation plan shall file the petition to the Department not later than 30 days after approval of the forest conservation plan.

Any judicial review of a forest conservation plan shall be:

a. Conducted in accordance with the Maryland state law; and

b. Limited to the record compiled by the local authority.

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

D. If a forest conservation plan is required by this subchapter, a person may not cut, clear, or grade until the county has approved the forest conservation plan.

E. 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 7 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 8.2A, C, or D or in Article 10, Sections 10.2A.

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 or Planning Commission.

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 payment in lieu of fee shall be paid prior to final approval of the subject final forest conservation 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.

D. Projects which use the Express Procedure shall submit a simplified forest conservation plan which includes a map showing the project's limit of disturbance, the forest conservation worksheet and note the monetary amount to be paid into the Washington County Forest Conservation Fund. This plan does not need to be recorded in the Land Records of Washington County if a permanent forest conservation easement is not being established onsite or offsite.

ARTICLE 7 AFFORESTATION

7.1 Definitions

A. AFFORESTATION under this section means the planting of trees where no or little forest exists on-site, in order to meet the afforestation thresholds.

B. AFFORESTATION THRESHOLD means the percentage of a net tract area up to which establishment of forest is required if the existing forest area is less than the threshold, as determined by the land use category.

7.2 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 2.60 of this Ordinance)	20% OF NET TRACT AREA
MEDIUM DENSITY RESIDENTIAL (As defined in Section 2.37 of this Ordinance)	20% 0F NET TRACT AREA
HIGH DENSITY RESIDENTIAL (As defined in Section 2.27 of this Ordinance)	15% OF NET TRACT AREA
MXD'S (As defined in Section 2.50 of this Ordinance)	15% OF NET TRACT AREA
COMMERCIAL AND INDUSTRIAL (As defined in Section 2.10 of this Ordinance)	15% OF NET TRACTAREA
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 7.1A above shall be reforested at a 2 to 1 ratio and added to the afforestation determined necessary in B1 above.

C. Linear projects that involve no change in land use may not be subject to afforestation requirements.

D. Solar photovoltaic facilities may not be subject to afforestation requirements under this article.

E. All unforested stream buffers must be afforested or reforested, unless the applicant demonstrates to the Department or the Planning Commission that afforestation in the riparian buffer:

(1) Would be in conflict with allowable uses as established for the riparian buffer;

(2) Is located on park property and conflicts with the mission and

established stewardship practices of the park; or

(3) Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

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:

A. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent streams and their buffers of at least 50 feet from the stream channel perennial streams and their buffers streams and their buffers of at least 100 feet from the stream channel, 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. Forest suitable for forest interior–dwelling species;

D. Forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of the Environment;

E. Forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area as identified by a local jurisdiction; and

F. Forests in urban areas that are most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution; as delineated in the priority urban forest map in the State Forest Conservation Technical Manual.

G. Forested buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of- way.

8.2. 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 Planning Commission that the applicant qualifies for a variance under Article 15 of this Ordinance.

A. 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 governing threatened or endangered species;

B. Trees that:

(1) Are part of an historic site or associated with a historic structure listed in the Washington County Historic Sites Survey, Maryland Inventory of Historic Properties or in the National Register of Historic Places; or

(2) Have been designated by the State or the Department as a national, State, or county champion tree; and

C. Any tree having a diameter measured at 4.5 feet above the ground of:

(1) 30 inches or more; or

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 DEFINITIONS

A. REFORESTATION under this section means the planting of trees to replace forest that has been recently or is proposed to be removed by development.

9.2 FOREST CONSERVATION

A. 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 in accordance with Article 10.2.

B. CALCULATIONS

(1) Except as provided in 7.2.A, for all existing forest cover measured to the nearest 1/100th acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of 1 acre planted for every 1 acre removed; and

a. For all existing forest cover located in a priority funding area designated under section 5-7B-03 of the State Finance and Procurement Article, and not identified as a priority for retention as described in Natural Resources Article §5-1607 Annotated Code of Maryland, measured to the nearest 1/100th acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of ½ acre planted for every 1 acre removed.

(2) Upon meeting the reforestation and afforestation requirements in this section, all unforested riparian buffers on site shall be afforested and reforested, unless the applicant demonstrated to the Local Authority that afforestation in the riparian buffer:

a. Would be in conflict with allowable uses as established for the riparian buffer;

b. Is located on park property and conflicts with the mission and established stewardship practices of the park; or

Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

(3) Transit-oriented development, as defined under § 7-101 of the Transportation Article, shall be:

a. Reforested at a ratio of at least 1/4 acre replanted for each acre removed; or

b. Mitigated in a manner in which 1/2 acre of forest is permanently protected for each acre removed;

(4) The construction of multifamily housing, consisting of a single structure containing at least 25 dwelling units, shall

be:

a. Reforested at a ratio of at least 1/4 acre replanted for each acre removed; or

b. Mitigated in a manner in which 1/2 acre of forest is permanently protected for each acre removed.

ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION

The priority sequence for the location of required forest mitigation according to the techniques described in Articles 10.1 and 10.2 shall be as follows:

(1) If the applicant has demonstrated to the satisfaction of the Department that all onsite retention, afforestation or reforestation opportunities have been exhausted, offsite locations for accomplishing required forest mitigation will prioritize providing mitigation in the same watershed as the project.

(2) If the applicant has demonstrated to the satisfaction Department that the required forest mitigation cannot be reasonably accomplished in the same watershed as the project's location, then the offsite retention, reforestation or afforestation shall occur in another watershed within the boundaries of Washington County.

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) Natural regeneration onsite where the technique can successfully meet the criteria defined in Article 2.

(5) Credit from an approved Forest Mitigation Bank that created new forest cover. The credit applied to the mitigation requirement is equal to 100% of the credit secured from the Forest Mitigation Bank;

(6) 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;

(6) 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;

(7) Offsite afforestation or reforestation, arranged by the applicant on private lands using whip and seedling stock;

(8) Offsite afforestation or reforestation, arranged by the applicant on public lands using whip and seedling stock;

(9) 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;

(10) The use of qualified conservation, as defined in Article 2, completed in an existing forest mitigation bank to meet:

a. Up to 50% of the afforestation or reforestation requirement, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity; or

b. If, a local jurisdiction proposes, and after public comment, the Maryland Department of Natural Resources approves a written justification for the increase, up to 60% of the afforestation or reforestation requirement, in which case the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity.

.

(11) Offsite protective easements on existing forested areas not currently protected in perpetuity 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 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.

(13) Payment of fee in lieu instead of afforestation and reforestation according to Article 11.

B. Within the Urban Growth Area or 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 and reforestation may be used toward meeting forest conservation requirements as part of a final Forest Conservation Plan:

(1) Forest creation using transplanted or nursery stock,

(2) Planting of street trees from the list in Appendix P with full credit based on the area of mature canopy coverage. Street trees must be provided with long term protective measures that include replacement for trees that do not survive beyond 5 years after planting.

(3) Acquisition as a mitigation technique of an off-site protective easement for existing forested areas not currently protected in perpetuity, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected;

(4) The restoration of on- or off-site degraded forest, including soil enhancement without grading, the removal of invasive species, wildlife control, the improvement of understory, and new tree plantings, as appropriate, in which case the afforestation or reforestation credit granted may not exceed

50% of the area of forest restored; and

(5) The establishment of planted green infrastructure or planted environmental site design practices beyond the amount required under § 4-203 of the Environment Article may grant full credit as a mitigation technique; and

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.

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

E. A long term binding protective easement for afforestation or reforestation on private property shall be in the form of an unencumbered perpetual easement granted by the property owner and any lien holder in favor of the County.

F. Policies on overlapping land preservation easements:

(1) A permanent forest conservation easement may be established over an existing land preservation easement provided the following criteria are met:

a. The existing land preservation easement does not guarantee the retention of the qualified forest area in perpetuity;

b. Assurance that the property is not encumbered by any covenants or other types of restrictions which could impair the property's use as a forest conservation easement or be released by interest holders and;

c. Written permission is obtained by the property owner or their designee from the holder of the original land preservation easement indicating that the forest conservation easement does not conflict with the terms of the original easement;

d. A long-term binding protective easement for forest retention on private property shall be in the form of an unencumbered perpetual easement granted by the property owner and any lien holder in favor of the County recorded in the Land Records of Washington County.

e. If located offsite, credit for an overlapping protective easement may not exceed 50% of the area of existing forest cover protected.

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 streams and their buffers of at least 50 feet from the stream channel and perennial streams and their buffers of at least 100 feet from the stream channel;

(2) 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;

(3) Establish or enhance forest buffers adjacent to critical habitats where appropriate;

(4) 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;

(5) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;

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

(7) Establish or enhance forest buffers in Special Planning Areas identified in the most recently adopted Comprehensive Plan.

B. On-site forest retention and planting as a form of mitigation is encouraged. However, large scale planting and retention of forest and protective easements on multiple individual lots intended for sale to individual owners in new residential subdivisions is a less preferred mitigation technique.

C. Forest planting and long-term protective easements shall not be

established on units of land of less than 20,000 square feet unless the area contains priority areas or priority forests as noted in Article 8. All forest conservation easements shall have a minimum width of at least 35'.

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 final Forest Conservation Plan approval, and before development project completion. Each phase is considered a separate development project.

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 in accordance with Article 10 and appropriate credits generated by a forest mitigation bank in the same watershed or County are not available, 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. Projects which have been given approval by the Department to pay into the Washington County Forest Conservation Fund shall submit

a modified forest conservation plan which includes a map showing the limit of disturbance, the worksheet and note the monetary amount to be paid into the Forest Conservation Fund. This plan does not need to be recorded in the Land Records of Washington County if a permanent forest conservation easement is not being established onsite or offsite.

F. Money contributed instead of afforestation or reforestation under this article shall be paid prior to the approval of the final forest conservation plan.

G. 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.

H. 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.

I. Money contributed under this article shall remain in the account and shall not be returned.

J. 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 forest previously planted or protected with payment in lieu funds. The fund may also be used to acquire and establish an easement which permanently retains existing forest, particularly priority forest or priority areas noted in Article 8, or to achieve urban 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.

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 security in the form of a bond, an irrevocable letter of credit, or personal check, 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, tree protection and maintenance during the 2 or 3- 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 to approval of the final forest conservation plan.

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 or 3 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.

13.4 Forfeiture of Surety

A. The surety shall be subject to forfeiture if the principal fails to comply with the Forest Conservation Plan or the Maintenance Agreement.

B. Before forfeiture of the surety, the Department shall notify the principal and the issuer, by certified mail, of the failure of the principal to comply with the Forest Conservation Plan or the Maintenance Agreement, and shall give the principal 30 days to come into compliance.

If a person fails to come into compliance within the 30-day period, the surety shall be forfeited and the County and its agents shall be allowed access to the property to accomplish the previously bonded planting. ARTICLE 14 TREE PROTECTION DEVICES AND SITE WORK

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 Signage, and other protective devices shall be installed within 30 days of subdivision plat approval, and the Department shall be notified for inspection. Signs shall remain posted in perpetuity to deter disturbance of the protected area.

14.4 Areas of disturbance identified on an approved forest conservation plan shall be identified, surveyed, and delineated on the plan and clearly marked in the field by a qualified professional. Except in the cases of septic percolation testing, geotechnical analysis, and survey lines, any person who extends the disturbance beyond the preapproved limits, without obtaining prior approval from the county, shall be in violation of this subchapter.

14.5 Critical root zone. No person shall perform any construction activity within

the critical root zone of any tree that is to be retained or within any area designated for retention, unless such activity is identified on the forest conservation plan and approved by the county.

14.6 Correcting soil compaction. Any forest conservation easement which is to receive planting that has been affected by grading or construction activities shall have the compacted soil restored to pre-disturbance conditions prior to tree installation so that normal root growth and plant development may occur.

14.7 The installation of trees for planted forest easements shall be conducted by a licensed landscaping contractor, forester, or other licensed tree care professional.

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. An applicant for a variance shall:

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

2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;

4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

6) Verify that the granting of a variance will not adversely affect water quality.

C. No variance shall be granted by the Planning Commission except upon a finding that the applicant has met the requirements in Subsections A and B of this article .

D. 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.

E. 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.

F. Notice of request for a variance shall be given to the Department of Natural Resources within 15 days of receipt by the Planning Commission.

G. 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.

H. RELOCATION OF FOREST CONSERVATION EASEMENTS.

Forest conservation easements are intended to be permanently established in the original location where they are designated. Easement relocation should only be considered in very limited circumstances where it is no longer possible to maintain the forest conservation easement to meet the minimum definition of a forest, as defined in Article 2, in the original location. If the property owner, or their designee, believes that circumstances have changed since the time that the forest easement was originally established to make meeting minimum standards impossible, the owner or their designee shall file a request with the Department that explains why the relocation is believed to be appropriate. The Department may authorize relocation of the forest conservation easement if the following procedures are followed:

1) The applicant must demonstrate to the satisfaction of the Department that the request is not based on conditions or circumstances which are the result of actions by the applicant and;

2) Only acreage contained within the easement that can no longer be maintained to meet minimum Ordinance requirements should be considered for relocation, with

any unaffected acreage remaining in the original easement location and;

3) All opportunities to reconfigure the affected acreage onsite have been exhausted.

4) If requesting to move the affected acreage offsite, the applicant must follow the preferred sequence of mitigation techniques in Article 10.1 in making their request to relocate the affected acreage offsite. Credit for all acreage relocated offsite may not exceed 50% of the area of forest cover protected; and

5) An amended record plat and other appropriate documentation, in a form acceptable to the County, are recorded among the land records.

6) Under no circumstances may the acreage contained within a permanent forest conservation easement be abandoned without replacement elsewhere in Washington County unless the regulated activity which generated the forest mitigation has been permanently withdrawn.

ARTICLE 16 ADMINISTRATION AND ENFORCEMENT

16.1 ADMINISTRATION

A. Department of Planning and Zoning ("Department").

(1) The review of all required plan submissions shall be administered by the Washington County Department of Planning and Zoning (“Department”). The Department shall also administer the forest banking program.

(2) All applications, maps, and documents relative to plan submissions subject to the provisions of this Ordinance shall be submitted to the Department, which will review all information and present the relevant information and the Department’s recommendations to the Washington County Planning Commission.

(3) The Department may refer the subdivision, site, grading or development plan to any County agency or any other agency it deems appropriate for their review, comments or recommendations pertaining to the forest resources. These recommendations shall be considered by the Planning Commission in making its decision.

(4) The Department shall collect all required sureties and installation

and maintenance agreements required by this Ordinance. A Department inspector will administer field checks of all required forest improvements and may issue penalties and citations for noncompliance with this chapter.

(5) Representatives authorized by the Department may enter properties subject to the provisions of this Ordinance at access easements designated on the approved development plan for the purposes of inspection, review, and enforcement in order to implement and administer the requirements of this Ordinance.

B. Washington County Planning Commission.

(1) Approval of the preliminary and final forest conservation plans shall rest with the Washington County Planning Commission ("WCPC"). The Department may also approve these plans as agents of the WCPC, in the case of minor subdivisions, final plats, site plans, and grading plans.

(2) The WCPC shall accept county agency and public comments and consider these comments as part of the record and its decision-making process.

(3) The WCPC shall act upon variance requests as outlined in Article 15.

C. Washington County Treasurer's Office and the Office of Budget and Finance.

(1) Any funds collected or held under this chapter shall be deposited with the Washington County Treasurer and accounted for by the Office of Budget and Finance.

D. County Attorney's office. The County Attorney's office shall review for legal sufficiency all legal agreements described in Article 20.

E. Washinton County Soil Conservation District Board of Supervisors

(1) Per Memorandum of Understanding ("MOU") between the Board of Commissioners of Washington County and Washington County ("BOCC") and the Soil Conservation District Board of Supervisors ("SCD"), the fee-in-lieu program shall be jointly administered by the BOCC and SCD as specified in the signed MOU.

16.2 NONCOMPLIANCE FEES

A. A person found to have failed to comply with the spirit or intent of this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2 or 3-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 per square foot of the area found to be in noncompliance with required forest conservation or planting.

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 shall not be returned.

16.3 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 or 3-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.

(1) In addition to the penalties noted in A above, any Forest Mitigation Bank found to be in violation of this ordinance, regulations adopted under this ordinance, the approved forest conservation plan or the associated 2 or 3 year installation and maintenance agreement shall not be permitted to provide additional mitigation credits until the violation has been remedied.

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 or 3-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 or 3-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 or 3-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.

G. The Department of Natural Resources shall be given notice of an enforcement action within 15 days of the start of an enforcement action.

H. Procedure for Investigation.

(1) When a Department inspector determines that a violation of the approved plan has occurred, the inspector shall notify the on-site personnel or the permittee in writing of the violation, describe the required corrective action and the time period in which to have the violation corrected.

(2) If the violation persists after the date specified for corrective action in the notice of violation, the Department inspector may issue a stop work order on that site. The Department inspector shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.

(3) If reasonable efforts to correct the violation are not undertaken by the permittee, the Department inspector may refer the violation for

legal action.

(4) The Department inspector may deny the issuance of any permits to an applicant when it determines that the applicant is not in compliance with the provisions of a building or grading permit or approved erosion and sediment control plan.

(5) Any step in the enforcement process may be taken at any time, depending upon the severity of the violation.

(6) If a person is working without a permit, the Department inspector shall stop work on the site except activity necessary to provide erosion and sediment control.

ARTICLE 17 ANNUAL REPORT

17.1 On or before August 31st 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 total acreage of forested and unforested floodplain area in all projects reviewed.

C. The amount and location of acres cleared, conserved, and planted, including any areas which utilize forest mitigation bank credits or areas located in the 100 year floodplain, in connection with a development project;

D. The linear length and acreage of unforested stream buffers within project limits prior to construction;

E. The linear length and acreage of stream buffers conserved, afforested or reforested in connection with a development project;

F. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended, the number of acres for which the fees were collected, and the number of acres reforested, afforested, or conserved using the fees;

G. The costs of implementing the Forest Conservation Program.

H. The acreage and location of all local forest mitigation banks approved during the past year with a description of the priority areas afforested or reforested by the bank;

I. The number of acres debited from each forest mitigation bank since the last annual report;

J. The number, location and type of violations and type of enforcement activity conducted in accordance with Article 16.

K. To the extent practicable, the size and location of all conserved and planted areas submitted in an electronic GIS format.

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.

ARTICLE 20 FOREST MITIGATION BANKS

20.1 ESTABLISHING A FOREST MITIGATION BANK

A. A person may create a Forest Mitigation Bank as defined in this ordinance from which applicants may acquire credits to meet the afforestation or reforestation requirements of this ordinance.

B. There shall be two (2) types of Forest Mitigation Banks:

(1) Forest Mitigation Banks that establish new forest cover and

(2) Forest Mitigation Banks that protect existing forest cover.

(3) A Forest Mitigation Bank may include a combination of the two (2) types noted above. Each type must be noted on the approved Forest Mitigation Bank Plan.

C. Definitions

(1) Existing Forest Cover (Qualified Conservation)

(a) Meets or exceeds the definition of a “forest” as defined in Article 2 of this Ordinance when the forest banking applicant submits a forest conservation plan; or

(b) Met or exceeded the definition of a “forest” as defined in

Article 2 of this Ordinance at any time in the 5 years prior to the submission of the forest conservation plan, and that was subject to a commercial forestry declaration of intent in connection with an approved forest management plan, as defined in Article 2.

(c) Includes priority retention areas noted in Article 8.

(d) The use of qualified conservation, as defined in Article 2, completed in an existing forest mitigation bank may be used to meet:

(1) Up to 50% of the afforestation or reforestation requirement, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity; or

(2) If, a local jurisdiction proposes, and after public comment, the Maryland Department of Natural Resources approves a written justification for the increase, up to 60% of the afforestation or reforestation requirement, in which case the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity.

(2) Establishment of New Forest Cover

(a) Forest newly created on land that does not meet the definition of a “forest” as defined in Article 2 of this Ordinance at the time the forest banking applicant submits a forest conservation plan, and that was not the subject of forest cutting subject to either an agriculture or commercial forestry declaration of intent within the last 5 years.

(b) Includes priority afforestation or reforestation areas as identified in Article 10.2.

D. The Forest Mitigation Bank shall:

(1) Provide for the new planting of forest or protect existing forest in accordance with a forest bank agreement and approved plan.

(2) Be protected by an easement and deed restrictions which require the land in the bank to remain forested in perpetuity and are enforceable by the Department.

(3) Limit the use of the land in the bank to those activities which

are consistent with forest conservation, such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department of Natural Resources.

(4) Use native plant species unless inappropriate; and

(5) Cause trees to be planted or retained which:

(a) Establish, retain or enhance forested buffers adjacent to intermittent streams of at least 50 feet from the stream channel and perennial streams to widths of at least 100 feet;

(b) Establish, retain or increase existing forested corridors which, where practical, should be a minimum of 300 feet wide to facilitate wildlife movement or to connect existing forests within or adjacent to the site;

(c) Establish, retain or enhance forest buffers adjacent to critical habitats where appropriate;

(d) Establish, retain or enhance forested areas in 100 year floodplains;

(e) Stabilize slopes of 25 percent or greater;

(f) Stabilize slopes of 15 percent or greater with a soil K factor value greater than 0.35 including the slopes of ravines or other natural depressions;

(g) Establish or retain forest buffers adjacent to areas of differing land uses where appropriate, or adjacent to highways or utility rights-of-way; or

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

Establish, retain or enhance forested areas that serve as water re-charge zones for municipal or county public water supplies as determined by hydrological studies

(i) Establish, retain or enhance forest buffers in Special Planning Areas identified in the most recently adopted Comprehensive Plan.

(6) Be planted following the guidelines of the current Technical

Manual as applicable.

E. Prior to approval, a person proposing to create a Forest Mitigation Bank shall submit to the Department a:

(1) Completed application on the form provided by Washington County which has been signed by all property owners or an agent who is authorized by notarized affidavit delegating such authority from the owners to the agent.

(2) Forest Mitigation Bank Plan which must be drawn to scale and contain a:

(a) Vicinity map of the proposed mitigation bank site;

(b) A forest stand delineation which meets the criteria in Section 5.2 of this ordinance if existing forest is to be protected.

(c) Copy of a deed to the property;

(d) A survey or other legally sufficient description of the bank for inclusion in the deeds of easement, deed restrictions or covenants, verifying and supporting the boundaries shown on the Plan;

(e) A title report or other assurances that verifies:

(1) The property is not encumbered by any covenants or other types of restrictions which could impair the property's use as a Forest mitigation Bank or a release from interest holders (if there is another encumbrance on the property, a subordination agreement will need to be submitted); and

(2) There is legally sufficient access to the Forest Mitigation Bank site which can be used by the County and its assignees to inspect the Forest Mitigation Bank

(f) Detailed planting plan, if indicated, which shall include a timetable and description of the site and soil preparation needed, existing site conditions, soil types, contours and areas of steep slope, floodplain, boundary of proposed easements with metes and bounds, species, size and spacing to be utilized, prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01a.

(3) For Mitigation Banks that contain new plantings, a binding two or three-year maintenance agreement as described in Section 6.3 A(1-8) that:

(a) Sets forth how the areas planted will be maintained to ensure protection and satisfactory establishment and survival, and;

(b) Includes watering, fertilization, invasive control measures, and reinforcement planting provisions if survival falls below required standards and;

The method and amount of any surety.

F. The proposed Forest Mitigation Bank shall be presented to the Planning Commission at a meeting open to the public. The Planning Commission will make a recommendation to the Board of County Commissioners of Washington County in favor or against the establishment of the Forest Mitigation Bank. The Board of County Commissioners will then act upon the matter at a meeting open to the public.

G. The owner of an approved Forest Mitigation Bank shall enter into an agreement with Washington County which contains:

(1) The approved afforestation or reforestation plan;

(2) The approved system for marking and tracking the portions of the bank that will be debited and;

An acknowledgement that credits cannot be debited from a Forest Mitigation Bank to meet forest mitigation requirements for a development project under current review until the Board of County Commissioners of Washington County has given their final approval and all required legal documentation has been signed and recorded in the Land Records of Washington County. For planted Forest Mitigation Banks, the bank may not debit any portion of the newly planted forest until two or three years of successful growth has been achieved, the site has been inspected by Washington County and determined to meet a specified survival rate and the security has been released.

(a) Required legal documentation includes an easement plat prepared by a licensed land surveyor with a metes and bounds description and area tabulation of the entire bank acreage; the Forest Mitigation Bank Deed of Easement shall be signed and recorded along with the appropriate exhibits (Description of Easement Property and

Declaration of Maintenance and Inspection Covenants, Conditions, and Restrictions; also any subordination agreements if applicable)

H. Protective signage shall be installed around the boundaries of the Forest Mitigation Bank within 30 days of final forest bank plat approval in accordance with Article 14, and the Department shall be notified for inspection.

20.2 PAYMENT BY CREDITS FROM A FOREST MITIGATION BANK

A. If a person subject to this ordinance demonstrates to the satisfaction of the Planning Commission that requirements for afforestation or reforestation on-site or off-site cannot be reasonably be accomplished according to the priorities in Article 10 of this ordinance the person may contribute credits from a Forest Mitigation Bank. A credit is required for each tenth of an acre of required mitigation.

B. Credits from a Forest Mitigation Bank shall be applied to planting requirements according to the Preferred Sequence of Techniques of Mitigation contained in Section 10.1 of this ordinance.

C. Proof of purchased credits from an approved Forest Mitigation Bank must be provided as follows:

(1) For a subdivision, evidence of the intent to use Forest Mitigation Bank credits and availability for purchase must be provided before Planning Commission approval of a subdivision..

(2) For a lot of record when a site plan is required, evidence of the intent to use Forest Mitigation Bank credits and availability for purchase must be provided before Planning Commission approval of the site plan.

(3) For a subdivision or lot of record, a Notice of Forest Banking Credit Transaction for Forest Mitigation Bank credits must be recorded prior to the approval of a final plat of subdivision or site plan.

(4) Any financial agreements between persons regarding approved forest bank transfers shall occur solely as a private transaction. Neither the Department nor the County shall become a party to the financial aspects of any transfers.

20.3 RELEASE OF UNCOMMITTED FOREST MITIGATION BANK ACREAGE

A. Upon application from a Forest Mitigation Bank owner, the Board of County Commissioners may release uncommitted forest bank acreage from the terms of the easement and deed restrictions referenced in Section 20.1.

B. Uncommitted acreage shall be defined as the total acreage of the mitigation bank covered by the easement and deed restrictions minus the total area in the mitigation bank for which credits have been debited.

C. If the Board of County Commissioners approves the release of the uncommitted acreage in the Forest Mitigation Bank the applicant must provide a plat prepared by a licensed land surveyor with a metes and bounds description and area tabulation of the entire bank acreage, acreage committed and uncommitted acreage to be released.

D. If approved, the acreage shall not be considered released and free of easement restrictions until proof of recordation of the release documents is provided to Washington County.

E. If approved, the applicant shall be responsible for the cost of preparation and recordation of all documents necessary to complete the release.

ARTICLE 21 BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES

A. The Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

FCO-26-001 **June 1, 2026**

WASHINGTON COUNTY ZONING ORDINANCE
STAFF REPORT AND ANALYSIS

ARTICLES 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 21

Proposal: Application is being made to amend multiple sections of the Forest Conservation Ordinance (FCO) to comply with the requirements of Maryland Senate Bill 256 (SB 256) and to provide clarification of existing regulations currently found in the FCO to meet the intent of Maryland's Forest Conservation Act (FCA).

Background:

The proposed amendments are primarily mandated by SB 526, passed in 2023. Subsequent amendments under HB1511 required that most changes under the original bill be adopted by counties by July 1, 2026. These changes represent the most significant updates to the statewide Forest Conservation Act in 30 years.

The genesis for this legislation was a statewide Technical Study on Changes in Forest Cover and Tree Canopy in Maryland released in 2022, which was mandated by HB 991 in 2021. This study was the most comprehensive look at changes to forest cover in Maryland since the passage of the Forest Conservation Act in 1991, using higher resolution aerial imagery than had previously been available. Among other goals, the purpose of this study was to evaluate the effectiveness of forest protection laws in Maryland over the last 20 years, and to track progress towards the state's commitment to completing its portion of the Chesapeake Bay Agreement.

To briefly summarize a complex document, what this study revealed is that state laws such as the Forest Conservation Act have been effective in stabilizing forest loss across Maryland overall, particularly in the last ten years, despite a growing population. The positive nature of this overall trajectory is mitigated somewhat, however, by a concurrent trend revealed in the study which notes a replacement in *forest cover* with what the study terms "*tree canopy outside of forests*." The latter term refers to the trend towards forest fragmentation. Fragmented forests do not offer nearly the same benefits to people and wildlife as contiguous blocks of intact forest cover. The legislation, therefore, seeks to further strengthen forest protection in Maryland to meet the increasingly complex challenges of tomorrow as they relate to land use.

Analysis:

Numerous changes to the Ordinance are proposed as part of SB 256 requirements, more than can be quickly summarized in this introductory staff report. The following are some of the major provisions slated to take effect statewide:

1. **Changes to Forest Mitigation Ratios**
    a. Forest cleared for development must now be replaced at 1:1 ratio (1 acre planted for every 1 acre removed) unless in a Priority Funding Area, in which case mitigation will be a 0.5:1 ratio.

2. **New Qualified Exemptions**
    a. Qualified exemptions related to transit-oriented development, multi-family housing and solar photovoltaic facilities mean these types of projects are now responsible only for reforestation requirements (replacement of trees cleared), not afforestation (the planting of trees where no or little forest exists on-site to meet minimum thresholds).

3. **Expanded Priority Areas for Retention**
    a. Existing forests in urban areas and in high value watersheds are among the new areas prioritized for retention during development.

4. **Expanded Opportunities for Public Review and Challenge**
    a. Forest clearing that takes place in the expanded priority retention areas will now sometimes require public notice and/or comment as part of project approval.

5. **Minimum Distances for Stream Buffers**
    a. Intermittent streams must be buffered at least 50 feet from the stream channel while perennial streams must be buffered at least 100 feet from the stream channel. Unforested stream buffers will need to be planted as part of the project's mitigation.

In addition to the state-mandated changes to the FCO, additional changes have been proposed by staff to text in the Ordinance. These changes are necessary to modernize our Ordinance, as it has never been comprehensively amended since its adoption locally in 1993. Many references remain in the Ordinance that are now obsolete, and time has clarified how the Department of Planning and Zoning administers this Ordinance on a day-to-day basis with far greater clarity than was possible thirty years ago. Accordingly, staff changes are needed to bring our Ordinance into compliance with state law as it has evolved over that period of time in total, and not just in response to the latest bill. These changes can be characterized as cleanup and

clarification amendments to existing Ordinance language, more so than adding significant new requirements or restrictions to developing land in Washington County.

Staff Recommendation:

The changes proposed to the FCO have been preliminarily reviewed by the Maryland Department of Natural Resources (DNR), the agency responsible for administering the FCA statewide, for their consistency with the requirements of SB 256. The language proposed incorporates all comments received from DNR. Extensive discussions about the proposed language were conducted among Planning and Zoning staff with knowledge of forest conservation regulations prior to arriving at the final changes proposed. Accordingly, staff recommends approval of these amendments to meet the requirements of SB 256 and to provide consistent implementation of our forest conservation policies and regulations.

Respectfully submitted,

Travis Allen
Senior Planner

The Honorable Commission John F. Barr, President
Board of County Commissioners for Washington County
100 W. Washington, St., Suite
Hagerstown, MD 21740

Re: Proposed amendments to the Washington County Forest Conservation Ordinance per SB 526 (2023)

Dear County Commissioners,

I would like to write in support of the amendments proposed by Planning Staff related to the Washington County Forest Conservation Ordinance. The Maryland General Assembly passed legislation in 2023 that includes significant changes to the Forest Conservation Act that, in turn, require local jurisdictions to update our ordinances to comply with these new requirements.

During my tenure with the Washington County Department of Planning and Zoning, I was involved in the drafting of these amendments, and I strongly support what is being presented. While the new state laws add mandated regulation and oversight to the forest conservation ordinance, Staff has made every effort to soften the impacts of the required changes. Planning staff spent many hours on training and discussion over these amendments with DNR to make them as little impactful as possible. Where the state has left some discretion to local jurisdictions to implement the new laws, staff has maintained a conservative position that will create the least impact.

Thank you for the opportunity to communicate my thoughts and opinions.

Respectfully,

Jill Baker, AICP

WASHINGTON COUNTY, MARYLAND

FOREST CONSERVATION ORDINANCE

Revision ~~7~~8

Adopted and Effective ~~November 18, 2014~~_____, 2026

TABLE OF CONTENTS

ARTICLE 1 PURPOSE 1

ARTICLE 2 DEFINITIONS 1

~~ARTICLE 3 APPLICATION ..... 13~~ARTICLE 3 APPLICATION 15

~~ARTICLE 4 GENERAL REQUIREMENTS ..... 18~~ARTICLE 4 GENERAL REQUIREMENTS 21

~~ARTICLE 5 FOREST STAND DELINEATION ..... 20~~ARTICLE 5 FOREST STAND DELINEATION 23

~~ARTICLE 6 FOREST CONSERVATION PLAN ..... 23~~ARTICLE 6 FOREST CONSERVATION PLAN 26

~~ARTICLE 6A EXPRESS PROCEDURES ..... 30~~ARTICLE 6A EXPRESS PROCEDURES 33

~~ARTICLE 7 AFFORESTATION ..... 32~~ARTICLE 7 AFFORESTATION 35

~~ARTICLE 8 PRIORITIES FOR RETENTION ..... 33~~ARTICLE 8 PRIORITIES FOR RETENTION 37

~~ARTICLE 9 REFORESTATION ..... 34~~ARTICLE 9 REFORESTATION 39

~~ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION ..... 35~~ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION 41

~~ARTICLE 11 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION ..... 39~~ARTICLE 11 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION 46

~~ARTICLE 12 RECOMMENDED TREE SPECIES ..... 40~~ARTICLE 12 RECOMMENDED TREE SPECIES 48

~~ARTICLE 13 SURETY ..... 41~~ARTICLE 13 SURETY 48

~~ARTICLE 14 TREE PROTECTION DEVICES ..... 42~~ARTICLE 14 TREE PROTECTION DEVICES AND SITE WORK 50

~~ARTICLE 15 VARIANCES ..... 42~~ARTICLE 15 VARIANCES 51

~~ARTICLE 16 ENFORCEMENT ..... 43~~ARTICLE 16 ADMINISTRATION AND ENFORCEMENT 53

~~ARTICLE 17 ANNUAL REPORT ..... 45~~ARTICLE 17 ANNUAL REPORT 56

~~ARTICLE 18 AMENDMENTS ..... 45~~ARTICLE 18 AMENDMENTS 57

~~ARTICLE 19 FEES ..... 46~~ARTICLE 19 FEES 58

~~ARTICLE 20 FOREST MITIGATION BANKS ..... 47~~ARTICLE 20 FOREST MITIGATION BANKS 59

ARTICLE 21 BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES 65

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 and corresponds to Washington County Zoning Classifications A, EC and P.

2.4 "Applicant"

A person as defined in Section 2.49 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 “Best Management Practice (BMP).”

Conservation practices or systems of practices and management measures that:

A. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

B. Minimize adverse impacts to the surface water, groundwater flow and circulation patterns, and to their chemical, physical, and biological characteristics.

~~2.6~~2.7 "Caliper"

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

~~2.7~~2.8 "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, HI, ORT, PB, ~~RB-E, RB-N~~RB, RV, SED, IG, ~~IT~~, PI, AP, IM 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. 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.

1. Is for certain activities exempted under this Ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland;

2. Does not circumvent the requirements of this Ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland; and

3. Does not conflict with the purposes of any other declaration of intent;

B. The document required under COMAR 08.19.01.05 or this Ordinance

2.15 “Degraded Forest”

A forest ecosystem that has lost its natural structure, function, and/or diversity due to human activity or other disturbances, leading to diminished capacity to regenerate and provide ecosystem services.

~~2.15~~2.16 "Department"

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

~~2.16~~2.17 "Development Project"

The grading, construction, or redevelopment activities occurring on a specific tract of land where the tract of land is 20,000 square feet or greater.

~~2.17~~2.18 "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~~mixed use development, has been completed.

2.19 "Disturbance"

Any activity on a development site requiring the cutting of trees, clearing, grading, grubbing, excavating, filling, or otherwise modifying the existing topography or forested features.

~~2.18~~2.20 "Easement"

A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which is included in the conveyance of land.

~~2.19~~2.21 "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.

~~2.20~~2.22 "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.

~~2.21~~2.23 "Forest conservation"

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

~~2.22~~2.24 "Forest Conservation and Management Agreement"

An agreement as applicable and described in Tax-Property Article, §8-211, Annotated Code of Maryland.~~C.O.M.A.R. 08.19.05.01~~.

~~2.23~~2.25 "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.

~~2.24~~2.26 "Forest cover"

The area of a site meeting the definition of forest.

~~2.25~~2.27 "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.~~ and~~

~~2.26~~2.28 "Forest Mitigation Bank"

An area of land which has been intentionally afforested or reforested or has existing forest protected by the application of a permanent easement for the express purpose of providing forest mitigation credits.

~~2.27~~2.29 "Forest Mitigation Bank Agreement"

An agreement between an individual owning a Forest Mitigation Bank and Washington County which commits the banker to certain procedures and requirements for maintenance and protection when creating and operating the Forest Mitigation Bank.

~~2.28~~2.30 "Forest Mitigation Bank Credit Transaction Notice"

Method of tracking acreage deductions resulting from the sale of credits in a legally established forest mitigation bank to meet the forest mitigation requirements for a development project that shall be recorded in land records prior to final forest conservation plan approval.

~~2.29~~2.31 "Forest Mitigation Bank Plan"

A plan submitted for approval of a Forest Mitigation Bank to the Washington County Department of Planning and Zoning or Planning Commission by an individual proposing to establish a forest mitigation bank.

~~2.30~~2.32 "Forest stand delineation"

An accurate scaled drawing containing all of the information required by Article 5 of this Ordinance as well as the Washington County Forest Conservation Technical Manual 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.

~~2.31~~2.33 "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).

~~2.32~~2.34 "Hardship"

The inability of a person to successfully comply with the provisions of this Ordinance relative to any regulated activity as a result of specific conditions existing on that site that severely restrict opportunities for mitigation while at the same time do not achieve the goals of this Ordinance.

~~2.33~~2.35 "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.

~~2.34~~2.36 "Impervious surface"

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

~~2.35~~2.37 "Immediate family member"

~~Father, mother, step-father, step-mother, son, daughter, brother, sister, step-son or step-daughter~~The owner of the property or a child of the owner.

~~2.36~~2.38 "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.

~~2.37~~2.39 "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.

~~2.38~~2.40 "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.

~~2.39~~2.41 “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.

~~2.40~~2.42 "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.

~~2.41~~2.43 "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.”

~~2.42~~2.44 "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.

~~2.43~~2.45 "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.

~~2.44~~2.46 "Minor Subdivision"

As defined in the subdivision Ordinance, a subdivision of 7 lots or less.

~~2.45~~2.47 "Mixed Use Development"

Development permitted in the MXR, MXC and ~~MXI~~ MXE floating zones described in the Washington County Zoning Ordinance and characterized by a combination of different types of residential, commercial and employment-focused ~~industrial~~ uses and arranged on the site according to a comprehensive development plan. ~~A mixed use development may also be referred to as a PUD~~.

~~2.46~~2.48 "Natural regeneration"

The natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre at the end of the 3-year maintenance period, which are capable of reaching a height of at least 20 feet at maturity.

~~2.47~~2.49 "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 non-forested areas, to the nearest 1/100th 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 developed areas covered by impervious surface and

located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval are exempt. Previously ~~disturbed or~~ mitigated areas are also exempt.

~~2.48~~2.50 "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.

~~2.49~~2.51 "Offsite"

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

~~2.50~~2.52 "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.

~~2.51~~2.53 “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.

~~2.52~~2.54 "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.

~~2.53~~2.55 "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.

~~2.54~~2.56 "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.”

~~2.55~~2.57 "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, as confirmed by field verification.

Commented [TA1]: Added in response to DNR comment from Model Ordinance

~~2.56~~2.58 "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.

~~2.57 "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. Development in the PUD and MX districts are similar in nature~~.

~~2.58~~2.59 Planted Green Infrastructure”

The implementation of natural systems in man-made environments to imitate and/or replicate natural forest processes.

~~2.59~~2.60 “Priority Funding Area”

An area defined by the State of Maryland or Washington County according to predetermined guidelines under State Finance and Procurement Article, §5-7b-02, Annotated Code of Maryland for the purpose of targeting growth and economic development through economic incentives. ~~Priority Funding Areas are depicted on Map 57 of the adopted Comprehensive Plan.~~

~~2.60~~2.61 "Public utility"

Any electricity transmission line, electric generating station, water, sewer,

electric, gas, telephone, and television cable service lines.

~~2.61~~2.62 "Qualified Conservation"

The conservation of all or part of an existing forest that:

A. Has been approved by the appropriate State of local forest conservation program for the purpose of establishing a forest mitigation bank; and

B. Is encumbered in perpetuity by a restrictive easement, covenant, or another similar mechanism recorded in the county land records to conserve its character as a forest.

~~2.62~~2.63 "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. Reforestation for a linear project involving overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

2.57 "Regulated activity"

Any of the following activities, when that activity occurs on a unit of land which is 20,000 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~~.~~;

~~D.~~E. Incremental development involving regulated activities occurring at different times on a given tract, parcel or lot cumulatively exceeding 20,000 square feet in accordance with Article 3.1.

2.58 "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.

2.59 "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.

2.60 "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.

2.61 "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 0~~.

2.62 "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.

2.63 "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.

2.64 "Steep Slope"

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

2.65 "Stream"

As defined in the Washington County Subdivision Ordinance a perennial or intermittent stream identified in the most current soil survey for Washington County, Maryland and field verified when necessary.

2.66 "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. Stream buffer distance guidelines are defined in the Washington County Subdivision Ordinance. Buffers must be at least 50 feet from the stream channel along intermittent streams and at least 100 feet from the stream channel from perennial stream, measured from and perpendicular to the top of the stream bank.

2.67 "Stream restoration project"

An activity that:

A. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;

B. Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to the number removed by the project;

C. May be performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the State or local government to achieve or maintain water quality standards; and

D. Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

~~2.67~~2.68 "Street Tree"

Trees selected from the approved street tree list that are a minimum of 1.5 inches in diameter at 4.5 feet above the ground and are planted in a linear fashion along a street rather than as a forest as defined in this ordinance.

~~2.68~~2.69 "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.

~~2.69~~2.70 "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.

~~2.70~~2.71 "Town Growth Area"

An area encompassed by a Town Growth Area Boundary recommended

by the Comprehensive Plan and further defined by urban zoning categories located proximate and surrounding certain incorporated towns in Washington County where growth and development is encouraged.

~~2.71~~2.72 "Transit-Oriented Development"

A deliberately planned type of urban development that creates compact, mixed-use communities near transit where people enjoy easy access to jobs and services. "TOD" typically means development within a half-mile of a transit station or adjacent to a transit corridor which maximizes transit usage, walking, and bicycling.

~~2.72~~2.73 "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."

~~2.73~~2.74 "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.

~~2.74~~2.75 "Urban Growth Area"

An area encompassed by an Urban Growth Area Boundary recommended by the Comprehensive Plan and further defined by urban zoning categories located proximate and surrounding the corporations of Hagerstown, Funkstown and Williamsport growth and development and investment and improvement in public infrastructure is encouraged.

~~2.75~~2.76 "Variance"

A relaxation of the requirements or standards of this Ordinance.

~~2.76~~2.77 "Washington County Forest Conservation Technical Manual"

The Maryland Department of Natural Resources' ~~*State*~~ *Forest Conservation Technical Manual,* ~~*Third*~~ *Fourth Edition,* ~~*1997*~~ *2024* 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.

~~2.77~~2.78 "Watershed"

A contiguous area of land, described as a subbasin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08, bounded by surface elevations that cause the water to flow naturally to the lowest elevation within the boundary.

~~2.78~~2.79 "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.

~~2.79~~2.80 "Worksheet"

The official set of forest mitigation data calculated to the nearest one-hundredth acre, defining the size of the net tract area together with the required forest calculations prepared in accordance with this chapter.

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 2.49 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 20,000 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.

C. A unit of county or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas 20,000 square feet or greater.

~~B.~~D. Incremental development involving regulated activities occurring at different times on a given tract, parcel or lot cumulatively exceeding 20,000 square feet in accordance may be tracked cumulatively for forest mitigation purposes.

3.2 This Ordinance does not apply to:

A. A person as defined in Section 2.49 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 20,000 square feet, except as per Article 3.1D.

B. A person as defined in Section 2.49 making application for a simplified subdivision as described in Section 318 of the Washington County Subdivision Ordinance.

C. A person as defined in Section 2.49 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 immediate family member of the owner, if the activity:

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

(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 immediate family member(s) and the relationship to the owner, and that transfer of ownership to a person or persons who are not immediate family members of the owner within 5 years of the date of the declaration may result in a loss of exemption;

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

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 20,000 square feet of forest; and

(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 5 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.~~F. Agricultural activities that do not result in a change in land use category, including the operation of orchards and tree farms and the construction and use of agricultural support buildings and other related structures built using accepted best management practices. A person engaging in an agricultural activity that causes clearing of 20,000 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 5 years from the date of the declaration; and

(2) A sketch map of the property which shows the area to be cleared.

~~H.~~G. 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.~~H. Highway construction activities governed under Natural Resources Article, §5-103, Annotated Code of Maryland.

~~J.~~I. The cutting or clearing of public utility rights-of-way or land for

electric generating stations licensed under Public Utility Companies~~Article~~ §§7-207 and 7-208 or 7-205~~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.~~J. Any 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;.

~~L.~~K. 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.~~L. 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 5 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.

~~(2)~~(3) Forest harvests within areas protected under an approved forest conservation plan shall meet the requirements specified in COMAR 08.19.05.02.

~~N.~~M. Noncoal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland.

~~O.~~N. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland.

~~P.~~O. The cutting or clearing of trees to comply with the requirements of:

(1) 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.

(2) The exemption does not apply to the cutting or clearing of trees to facilitate the expansion or extension of the boundaries of any airport or runway.

P. ~~New development as the result of a teardown and rebuilding on the same footprint, with no increase in the area of the tract's impervious surfaces~~. An activity on a previously developed area covered by impervious surface and located in priority funding areas at the time of the application for subdivision plan, grading, or sediment control permit approval.

Q. Any stream restoration project, as defined in Article 2, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner or owners.

R. Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.

S. The construction of a new federal government facility projected to house the employment of at least 2,500 persons;

T. Replats or other changes to previously approved lots not requiring subdivision

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 5 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 5 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 20,000 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 all 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 total acres of qualified forest, species, location, and size of trees and showing dominant and co-dominant forest types as well as all priority retention areas noted in Article 8;

~~(3)~~a. Forest stands should be field sampled using the following Washington County Forest Conservation Technical Manual criteria: One plot per four acres of forest stand area; Two plots minimum per stand; and Three plots minimum for the total forested area of the site

(4) Narrative analysis including forest stand characteristics listed in 5.2D(3), site description, sampling methodology, sampling data sheets and the identification of priority forests and priority areas noted in Articles 8 and 10.2 of this Ordinance for forest retention, afforestation or reforestation.

(5) Location of 100-year floodplains as defined in the Washington County Floodplain Management Ordinance and all environmentally sensitive areas including non-tidal wetlands, intermittent streams and their buffers of at least 50 feet from the stream channel and perennial streams and their buffers of at least 100 feet from the stream channel.~~stream buffers consistent with the requirements for identifying stream buffers in the Subdivision Ordinance~~;

(6) Habitat supporting rare, threatened and endangered species as identified by the Maryland Department of Natural Resources Wildlife and Heritage Service;~~-~~

~~(6)~~(7) 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~~.~~

~~(3)~~(4) The tract does not include any priority forests or priority areas as noted in Article 8.

B. The Department shall consider a simplified forest stand delineation complete if it includes:

(1) All requirements under Section 5.2D(1), (2), ~~(4), and~~ (5), (6) and (7) 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 Environment Article, Title 9, Annotated Code of Maryland~~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 Environment Article, Title 9, Annotated Code of Maryland.~~COMAR~~

~~(5)~~(4) ~~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 or 3-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) Include a depiction of all existing and planned utility easements on the site with reference to the beneficiary.

~~(11)~~(12) Information required in the Washington County Forest Conservation Technical Manual; and

~~(12)~~(13) Other information the Department determines is necessary to implement this Ordinance.

~~(13)~~(14) 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 or 3-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, fertilizing, control of competing vegetation, protection from diseases, pests, mechanical injury 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~~ 2 or 3-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.

(e) The binding installation and maintenance agreement and its inclusions noted in 4 a-d above shall be binding for a 3-year period when bare root or container grown whip or seedling stock is installed.

(5) Show the amount of financial security to be provided before approval of the final forest conservation plan~~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 that are not already protected in perpetuity 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.

(d) Contains signatures of any lien holders acknowledging the presence and terms of any easements contained in the plan

(7) Include the substantive elements required under Section 6.2A(2)–(5), (7)–(9), and (11)-(12) 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) At least 20 days before approval of the Forest Conservation Plan, the local authority shall:

(a) Provide notice that is consistent with local authority notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in Natural Resources Article, §5-1607, Annotated Code of Maryland; and

b. On a net tract area of at least 5 acres and if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval; or

c. For any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

2) Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent.

~~(2)~~(3) 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.

~~(3)~~(4) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.

~~(4)~~(5) The Department may require further information and extend the deadline in 15 calendar day increments under extenuating circumstances with appropriate notice to the applicant.

(6) At the request of the applicant, the Department may extend the deadline in 15 calendar day increments under extenuating circumstances.

(7) A person petitioning for a judicial review of an approved forest conservation plan shall file the petition to the Department not later than 30 days after approval of the forest conservation plan.

Any judicial review of a forest conservation plan shall be:

a. Conducted in accordance with the Maryland state law; and

b. Limited to the record compiled by the local authority.

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

~~C.~~D. If a forest conservation plan is required by this subchapter, a person may not cut, clear, or grade until the county has approved the forest conservation plan.

~~D.~~E. 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 7 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 8.2A, C, or D 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~~Department or Planning Commission.

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.~~F. The payment in lieu of fee shall be paid prior to final approval of the subject ~~subdivision or site plan~~ final forest conservation 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.

D. Projects which use the Express Procedure shall submit a simplified forest conservation plan which includes a map showing the project's limit of disturbance, the forest conservation worksheet and note the monetary amount to be paid into the Washington County Forest Conservation Fund. This plan does not need to be recorded in the Land Records of Washington County if a permanent forest conservation easement is not being established onsite or offsite.

ARTICLE 7 AFFORESTATION

7.1 Definitions

A. AFFORESTATION under this section means the planting of trees where no or little forest exists on-site, in order to meet the afforestation thresholds.

B. AFFORESTATION THRESHOLD means the percentage of a net tract area up to which establishment of forest is required if the existing forest area is less than the threshold, as determined by the land use category.

7.2 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	20% OF NET TRACT AREA

(As defined in Section 2.3 of this Ordinance)

SPECIAL PLANNING AREAS (As defined in Section 2.60 of this Ordinance)	20% OF NET TRACT AREA
MEDIUM DENSITY RESIDENTIAL (As defined in Section 2.37 of this Ordinance)	20% 0F NET TRACT AREA
HIGH DENSITY RESIDENTIAL (As defined in Section 2.27 of this Ordinance)	15% OF NET TRACT AREA
~~PUD'S~~MXD'S (As defined in Section 2.50 of this Ordinance)	15% OF NET TRACT AREA
COMMERCIAL AND INDUSTRIAL (As defined in Section 2.10 of this Ordinance)	15% OF NET TRACTAREA
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 7.1A above shall be reforested at a 2 to 1 ratio and added to the afforestation determined necessary in B1 above.

C. Linear projects that involve no change in land use may not be subject to afforestation requirements.

D. Solar photovoltaic facilities may not be subject to afforestation requirements under this article.

E. All unforested stream buffers must be afforested or reforested, unless the applicant demonstrates to the Department or the Planning Commission that afforestation in the riparian buffer:

(1) Would be in conflict with allowable uses as established for the riparian buffer;

(2) Is located on park property and conflicts with the mission and established stewardship practices of the park; or

(3) Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

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:

A. Trees, shrubs, and plants located in sensitive areas including~~within~~ the 100-year floodplain, intermittent streams and their buffers of at least 50 feet from the stream channel ~~and~~ perennial streams and their buffers streams and their buffers of at least 100 feet from the stream channel, 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. Forest suitable for forest interior–dwelling species;

~~B.~~D. Forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of the Environment;

~~C.~~E. Forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area as identified by a local jurisdiction; and

F. Forests in urban areas that are most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution; as delineated in the priority urban forest map in the State Forest Conservation Technical Manual.

~~D.~~G. Forested buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of- way.

8.2. 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 Planning Commission that the applicant qualifies for a variance under Article 15 of this Ordinance.

A. 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 governing threatened or endangered species;

B. Trees that:

~~C.~~(1) ~~are~~ Are part of an historic site or associated with a historic structure listed in the Washington County Historic Sites Survey, Maryland Inventory of Historic Properties or in the National Register of Historic Places; ~~and~~or

~~D.~~(2) Have been designated by the State or the Department as a national, State, or county champion tree; and

~~E.~~C. 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 DEFINITIONS

A. REFORESTATION under this section means the planting of trees to replace forest that has been recently or is proposed to be removed by development.

9.2 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.~~A. 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 in accordance with Article 10.2~~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:~~.

Commented [TA2]: This section modified in accordance with SB 256, Model Ordinance, DNR Comments and elimination of obsolete references. Conservation threshold is eliminated in new legislation.

~~CATEGORY OF USE THRESHOLD PERCENTAGE~~

~~AGRICULTURAL AND RESOURCE AREAS 50 %~~
~~(As defined in Section 2.3 of this Ordinance)~~

~~SPECIAL PLANNING AREAS 50 %~~
~~(As defined in Section 2.60 of this Ordinance)~~

~~MEDIUM DENSITY RESIDENTIAL AREAS 25 %~~
~~(As defined in Section 2.37 of this Ordinance)~~

~~INSTITUTIONAL DEVELOPMENT AREAS 20 %~~
~~(As defined in Section 2.30 of this Ordinance)~~

~~HIGH DENSITY RESIDENTIAL AREAS 20 %~~
~~(As defined in Section 2.27 of this Ordinance)~~

~~PUD'S 15 %~~
~~(As defined in Section 2.50 of this Ordinance)~~

~~COMMERCIAL AND INDUSTRIAL USE AREAS 15 %~~
~~(As defined in Section 2.10 of this Ordinance)~~

~~C.~~B. CALCULATIONS

(1) Except as provided in 7.2.A, for all existing forest cover measured to the nearest 1/100th acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of 1 acre planted for every 1 acre removed; and

a. For all existing forest cover located in a priority funding area designated under section 5-7B-03 of the State Finance and Procurement Article, and not identified as a priority for retention as described in Natural Resources Article §5-1607 Annotated Code of Maryland, measured to the nearest 1/100th acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of ½ acre planted for every 1 acre removed.

(2) Upon meeting the reforestation and afforestation requirements in this section, all unforested riparian buffers on site shall be afforested and reforested, unless the applicant demonstrated to the Local Authority that afforestation in the riparian buffer:

a. Would be in conflict with allowable uses as established for the riparian buffer;

b. Is located on park property and conflicts with the mission and established stewardship practices of the park; or

~~b.~~ Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.~~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.~~

(3) Transit-oriented development, as defined under § 7-101 of the Transportation Article, shall be:

a. Reforested at a ratio of at least 1/4 acre replanted for each acre removed; or

b. Mitigated in a manner in which 1/2 acre of forest is permanently protected for each acre removed;

(4) The construction of multifamily housing, consisting of a single structure containing at least 25 dwelling units, shall be:

a. Reforested at a ratio of at least 1/4 acre replanted for each acre removed; or

b. Mitigated in a manner in which 1/2 acre of forest is permanently protected for each acre removed.

Commented [TA3]: These two removed from Article 3 Exemptions and now contained only here at direction from DNR.

ARTICLE 10 PREFERRED SEQUENCE OF TECHNIQUES AND AREAS FOR MITIGATION

The priority sequence for the location of required forest mitigation according to the techniques described in Articles 10.1 and 10.2 shall be as follows:

(1) If the applicant has demonstrated to the satisfaction of the Department that all onsite retention, afforestation or reforestation opportunities have been exhausted, offsite locations for accomplishing required forest mitigation will prioritize providing mitigation in the same watershed as the project.

(2) If the applicant has demonstrated to the satisfaction Department that the required forest mitigation cannot be reasonably accomplished in the same watershed as the project's location, then the offsite retention, reforestation or afforestation shall occur in another watershed within the boundaries of Washington County.

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) Natural regeneration onsite where the technique can successfully meet the criteria defined in Article 2.

~~(4)~~(5) Credit from an approved Forest Mitigation Bank that created new forest cover. The credit applied to the mitigation requirement is equal to 100% of the credit secured from the Forest Mitigation Bank;

~~(5)~~(6) 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;

(6) 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;

(7) Offsite afforestation or reforestation, arranged by the applicant on private lands using whip and seedling stock;

(8) Offsite afforestation or reforestation, arranged by the applicant on public lands using whip and seedling stock;

(9) 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;

(10) The use of qualified conservation, as defined in Article 2, completed in an existing forest mitigation bank to meet:

a. Up to 50% of the afforestation or reforestation requirement, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity; or

b. If, a local jurisdiction proposes, and after public comment, the Maryland Department of Natural Resources approves a written justification for the increase, up to 60% of the afforestation or reforestation requirement, in which case the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity.

~~(10) Credit from an approved Forest Mitigation Bank that protected existing forest. The credit shall not exceed 50% of the area of existing forest protected;~~

~~(11) Natural regeneration on site~~ .

~~(12)~~(11) Off~~-~~site protective easements on existing forested areas not currently protected in perpetuity 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 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~~13) Payment of fee in lieu instead of afforestation and reforestation according to Article 11.

B. Within the Urban Growth Area or 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 and reforestation may be used toward meeting forest conservation requirements as part of a final Forest Conservation Plan:

(1) Forest creation using transplanted or nursery stock,

(2) Planting of street trees from the list in Appendix P with full credit based on the area of mature canopy coverage. Street trees must be provided with long term protective measures that include replacement for trees that do not survive beyond 5 years after planting.

(3) Acquisition as a mitigation technique of an off-site protective easement for existing forested areas not currently protected in perpetuity, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected;

(4) The restoration of on- or off-site degraded forest, including soil enhancement without grading, the removal of invasive species, wildlife control, the improvement of understory, and new tree plantings, as appropriate, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest restored; and

(5) The establishment of planted green infrastructure or planted environmental site design practices beyond the amount required under § 4-203 of the Environment Article may grant full credit as a mitigation technique; and

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.

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

E. A long term binding protective easement for afforestation or reforestation on private property shall be in the form of an unencumbered perpetual easement granted by the property owner and any lien holder in favor of the County.

F. Policies on overlapping land preservation easements:

(1) A permanent forest conservation easement may be established over an existing land preservation easement provided the following criteria are met:

a. The existing land preservation easement does not guarantee the retention of the qualified forest area in perpetuity;

b. Assurance that the property is not encumbered by any covenants or other types of restrictions which could impair the property's use as a forest conservation easement or be released by interest holders and;

c. Written permission is obtained by the property owner or their designee from the holder of the original land

preservation easement indicating that the forest conservation easement does not conflict with the terms of the original easement;

d. A long-term binding protective easement for forest retention on private property shall be in the form of an unencumbered perpetual easement granted by the property owner and any lien holder in favor of the County recorded in the Land Records of Washington County.

e. If located offsite, credit for an overlapping protective easement may not exceed 50% of the area of existing forest cover protected.

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 streams and their buffers of at least 50 feet from the stream channel and perennial streams and their buffers of at least 100 feet from the stream channel;

~~(2) Establish forest buffers in nonforested areas on 100-year floodplains, when appropriate and permitted by the Washington County Floodplain Management Ordinance;~~

~~(3)~~(2) 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)~~(3) Establish or enhance forest buffers adjacent to critical habitats where appropriate;

~~(5)~~(4) 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)~~(5) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;

(6) Establish forest areas adjacent to existing forests to increase

the overall area of contiguous forest cover, when appropriate.

(7) Establish or enhance forest buffers in Special Planning Areas identified in the most recently adopted Comprehensive Plan.

B. On-site forest retention and planting as a form of mitigation is encouraged. However, large scale planting and retention of forest and protective easements on multiple individual lots intended for sale to individual owners in new residential subdivisions is a less preferred mitigation technique.

C. Forest planting and long-term protective easements shall not be established on ~~parcels~~ units of land of less than 20,000 square feet unless the area contains priority areas or priority forests as noted in Article 8. All forest conservation easements shall have a minimum width of at least 35'.

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 final Forest Conservation Plan approval, and before development project completion. Each phase is considered a separate development project.

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 in accordance with Article 10~~,~~ and appropriate credits generated by a forest mitigation bank in the same watershed or County are not available, ~~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. Projects which have been given approval by the Department to pay into the Washington County Forest Conservation Fund shall submit a modified forest conservation plan which includes a map showing the limit of disturbance, the worksheet and note the monetary amount to be paid into the Forest Conservation Fund. This plan does not need to be recorded in the Land Records of Washington County if a permanent forest conservation easement is not being established onsite or offsite.

F. 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~~ approval of the final forest conservation plan.

G. 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.

H. 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.

I. Money contributed under this article shall remain in the account and shall not be returned.

J. 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 forest previously planted or protected with payment in lieu funds. The fund may also be used to acquire and establish an easement which permanently retains existing forest, particularly priority forest or priority areas noted in Article 8, or to achieve urban 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.

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 security in the form of a bond, an irrevocable letter of credit, or personal checksurety, 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, tree protection and maintenance during the 2 or 3- 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 to ~~recordation of an approved subdivision plat or issuance of a building permit, whichever is earlier and applicable~~ approval of the final forest conservation plan.

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 or 3 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.

13.4 Forfeiture of Surety

A. The surety shall be subject to forfeiture if the principal fails to comply with the Forest Conservation Plan or the Maintenance Agreement.

B. Before forfeiture of the surety, the Department shall notify the principal and the issuer, by certified mail, of the failure of the principal to comply with the Forest Conservation Plan or the Maintenance Agreement, and shall give the principal 30 days to come into compliance.

~~C.~~ If a person fails to come into compliance within the 30-day period, the surety shall be forfeited and the County and its agents shall be allowed access to the property to accomplish the previously bonded planting.

ARTICLE 14 TREE PROTECTION DEVICES AND SITE WORK

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~~Signage, and other protective devices shall be installed within 30 days of subdivision plat approval, and the Department shall be notified for inspection. Signs shall remain posted in perpetuity to deter disturbance of the protected area.

14.4 Areas of disturbance identified on an approved forest conservation plan shall be identified, surveyed, and delineated on the plan and clearly marked in the field by a qualified professional. Except in the cases of septic percolation testing, geotechnical analysis, and survey lines, any person who extends the disturbance beyond the preapproved limits, without obtaining prior approval from the county, shall be in violation of this subchapter.

14.5 Critical root zone. No person shall perform any construction activity within the critical root zone of any tree that is to be retained or within any area designated for retention, unless such activity is identified on the forest conservation plan and approved by the county.

14.6 Correcting soil compaction. Any forest conservation easement which is to receive planting that has been affected by grading or construction activities shall have the compacted soil restored to pre-disturbance conditions prior to tree installation so that normal root growth and plant development may occur.

~~14.3~~14.7 The installation of trees for planted forest easements shall be conducted by a licensed landscaping contractor, forester, or other licensed tree care professional.

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. An applicant for a variance shall:

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

2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in

similar areas;

3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;

4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

~~A.~~6) Verify that the granting of a variance will not adversely affect water quality.

~~B.~~C. No variance shall be granted by the Planning Commission except upon a finding that the applicant has met the requirements in Subsections A and B of this article ~~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.~~D. 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.~~E. 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.~~F. 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.~~G. 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.

~~G.~~H. RELOCATION OF FOREST CONSERVATION EASEMENTS.

Forest conservation easements are intended to be permanently established in the original location where they are designated. Easement relocation should only be considered in very limited circumstances where it is no longer possible to maintain the forest conservation easement to meet the minimum definition of a forest, as defined in Article 2, in the original location. If the property owner, or their designee, believes that circumstances have changed since the time that the forest easement was originally established to make meeting minimum standards impossible, the owner or their designee shall file a request with the Department that explains why the relocation is believed to be appropriate. The Department may authorize relocation of the forest conservation easement if the following procedures are followed:

1) The applicant must demonstrate to the satisfaction of the Department that the request is not based on conditions or circumstances which are the result of actions by the applicant and;

2) Only acreage contained within the easement that can no longer be maintained to meet minimum Ordinance requirements should be considered for relocation, with any unaffected acreage remaining in the original easement location and;

3) All opportunities to reconfigure the affected acreage onsite have been exhausted.

4) If requesting to move the affected acreage offsite, the applicant must follow the preferred sequence of mitigation techniques in Article 10.1 in making their request to relocate the affected acreage offsite. Credit for all acreage relocated offsite may not exceed 50% of the area of forest cover protected; and

5) An amended record plat and other appropriate documentation, in a form acceptable to the County, are recorded among the land records.

~~H.~~6) Under no circumstances may the acreage contained within a permanent forest conservation easement be abandoned without replacement elsewhere in Washington County unless the regulated activity which generated the forest mitigation has been permanently withdrawn.

ARTICLE 16 ADMINISTRATION AND ENFORCEMENT

16.1 ADMINISTRATION

A. Department of Planning and Zoning ("Department").

(1) The review of all required plan submissions shall be administered by the Washington County Department of Planning and Zoning ("Department"). The Department shall also administer the forest banking program.

(2) All applications, maps, and documents relative to plan submissions subject to the provisions of this Ordinance shall be submitted to the Department, which will review all information and present the relevant information and the Department's recommendations to the Washington County Planning Commission.

(3) The Department may refer the subdivision, site, grading or development plan to any County agency or any other agency it deems appropriate for their review, comments or recommendations pertaining to the forest resources. These recommendations shall be considered by the Planning Commission in making its decision.

(4) The Department shall collect all required sureties and installation and maintenance agreements required by this Ordinance. A Department inspector will administer field checks of all required forest improvements and may issue penalties and citations for noncompliance with this chapter.

(5) Representatives authorized by the Department may enter properties subject to the provisions of this Ordinance at access easements designated on the approved development plan for the purposes of inspection, review, and enforcement in order to implement and administer the requirements of this Ordinance.

B. Washington County Planning Commission.

(1) Approval of the preliminary and final forest conservation plans shall rest with the Washington County Planning Commission ("WCPC"). The Department may also approve these plans as agents of the WCPC, in the case of minor subdivisions, final plats, site plans, and grading plans.

(2) The WCPC shall accept county agency and public comments and consider these comments as part of the record and its decision-making process.

(3) The WCPC shall act upon variance requests as outlined in Article 15.

C. Washington County Treasurer's Office and the Office of Budget and

Finance.

(1) Any funds collected or held under this chapter shall be deposited with the Washington County Treasurer and accounted for by the Office of Budget and Finance.

D. County Attorney's office. The County Attorney's office shall review for legal sufficiency all legal agreements described in Article 20.

E. Washinton County Soil Conservation District Board of Supervisors

(1) Per Memorandum of Understanding ("MOU") between the Board of Commissioners of Washington County and Washington County ("BOCC") and the Soil Conservation District Board of Supervisors ("SCD"), the fee-in-lieu program shall be jointly administered by the BOCC and SCD as specified in the signed MOU.

~~16.1~~16.2 NONCOMPLIANCE FEES

A. A person found to have failed to comply with the spirit or intent of this Ordinance, regulations adopted under this Ordinance, the approved forest conservation plan, or the associated 2 or 3-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 per square foot of the area found to be in noncompliance with required forest conservation or planting.

~~A.~~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~~ shall not be returned.

~~16.2~~16.3 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 or 3-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.

(1) In addition to the penalties noted in A above, any Forest Mitigation Bank found to be in violation of this ordinance, regulations adopted under this ordinance, the approved forest conservation plan or the associated 2 or 3 year installation and maintenance agreement shall not be permitted to provide additional mitigation credits until the violation has been remedied.

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 or 3-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 or 3-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 or 3-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.

G. The Department of Natural Resources shall be given notice of an enforcement action within 15 days of the start of an enforcement action.

H. Procedure for Investigation.

(1) When a Department inspector determines that a violation of the approved plan has occurred, the inspector shall notify the on-site personnel or the permittee in writing of the violation, describe the required corrective action and the time period in which to have the violation corrected.

(2) If the violation persists after the date specified for corrective action in the notice of violation, the Department inspector may issue a stop work order on that site. The Department inspector shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to correct the violation.

(3) If reasonable efforts to correct the violation are not undertaken by the permittee, the Department inspector may refer the violation for legal action.

(4) The Department inspector may deny the issuance of any permits to an applicant when it determines that the applicant is not in compliance with the provisions of a building or grading permit or approved erosion and sediment control plan.

(5) Any step in the enforcement process may be taken at any time, depending upon the severity of the violation.

~~(1)~~(6) If a person is working without a permit, the Department inspector shall stop work on the site except activity necessary to provide erosion and sediment control.

ARTICLE 17 ANNUAL REPORT

17.1 On or before ~~March~~ August 31st 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 total acreage of forested and unforested floodplain area in all projects reviewed.

C. The amount and location of acres cleared, conserved, and planted, including any areas which utilize forest mitigation bank credits or areas located in the 100 year floodplain, in connection with a

development project;

~~B.~~D. The linear length and acreage of unforested stream buffers within project limits prior to construction;

~~C.~~E. The linear length and acreage of stream buffers conserved, afforested or reforested in connection with a development project;

~~D.~~F. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended, the number of acres for which the fees were collected, and the number of acres reforested, afforested, or conserved using the fees; ~~and~~

~~E.~~G. The costs of implementing the Forest Conservation Program.

H. The acreage and location of all local forest mitigation banks approved during the past year with a description of the priority areas afforested or reforested by the bank;

I. The number of acres debited from each forest mitigation bank since the last annual report;

~~F.~~J. The number, location and type of violations and type of enforcement activity conducted in accordance with Article 16.

~~G.~~K. To the extent practicable, the size and location of all conserved and planted areas submitted in an electronic GIS format.

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.

Commented [TA4]: Added in response to state comments

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.

ARTICLE 20 FOREST MITIGATION BANKS

20.1 ESTABLISHING A FOREST MITIGATION BANK

A. A person may create a Forest Mitigation Bank as defined in this ordinance from which applicants may acquire credits to meet

the afforestation or reforestation requirements of this ordinance.

B. There shall be two (2) types of Forest Mitigation Banks:

(1) Forest Mitigation Banks that establish new forest cover and

(2) Forest Mitigation Banks that protect existing forest cover.

(3) A Forest Mitigation Bank may include a combination of the two (2) types noted above. Each type must be noted on the approved Forest Mitigation Bank Plan.

C. Definitions

~~(4)~~(1) Existing Forest Cover (Qualified Conservation)

(a) Meets or exceeds the definition of a "forest" as defined in Article 2 of this Ordinance when the forest banking applicant submits a forest conservation plan; or

(b) Met or exceeded the definition of a "forest" as defined in Article 2 of this Ordinance at any time in the 5 years prior to the submission of the forest conservation plan, and that was subject to a commercial forestry declaration of intent in connection with an approved forest management plan, as defined in Article 2.

(c) Includes priority retention areas noted in Article 8.

(d) The use of qualified conservation, as defined in Article 2, completed in an existing forest mitigation bank may be used to meet:

(1) Up to 50% of the afforestation or reforestation requirement, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity; or

(2) If, a local jurisdiction proposes, and after public comment, the Maryland Department of Natural Resources approves a written justification for the increase, up to 60% of the afforestation or reforestation requirement, in which case the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity.

~~(5)~~(2) Establishment of New Forest Cover

(a) Forest newly created on land that does not meet the definition of a "forest" as defined in Article 2 of this Ordinance at the time the forest banking applicant submits a forest conservation plan, and that was not the subject of forest cutting subject to either an agriculture or commercial forestry declaration of intent within the last 5 years.

~~(a)~~(b) Includes priority afforestation or reforestation areas as identified in Article 10.2.

~~C.~~D. The Forest Mitigation Bank shall:

(1) Provide for the new planting of forest or protect existing forest in accordance with a forest bank agreement and approved plan.

(2) Be protected by an easement and deed restrictions which require the land in the bank to remain forested in perpetuity and are enforceable by the Department.

(3) Limit the use of the land in the bank to those activities which are consistent with forest conservation, such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department of Natural Resources~~Washington County~~.

(4) Use native plant species unless inappropriate; and

(5) Cause trees to be planted or retained which:

(a) Establish, retain or enhance forested buffers adjacent to intermittent streams of at least 50 feet from the stream channel and perennial streams to widths of at least ~~50~~ 100 feet;

(b) Establish, retain or increase existing forested corridors which, where practical, should be a minimum of 300 feet wide~~, but in no case less than 100 feet wide~~ to facilitate wildlife movement or to connect existing forests within or adjacent to the site;

(c) Establish, retain or enhance forest buffers adjacent to critical habitats where appropriate;

(d) Establish, retain or enhance forested areas in 100 year floodplains;

Commented [TA5]: Removed in response to state comments

(e) Stabilize slopes of 25 percent or greater;

(f) Stabilize slopes of 15 percent or greater with a soil K factor value greater than 0.35 including the slopes of ravines or other natural depressions;

(g) Establish or retain forest buffers adjacent to areas of differing land uses where appropriate, or adjacent to highways or utility rights-of-way; or

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

~~(h)~~ Establish, retain or enhance forested areas that serve as water re-charge zones for municipal or county public water supplies as determined by hydrological studies

(i) Establish, retain or enhance forest buffers in Special Planning Areas identified in the most recently adopted Comprehensive Plan.

(6) Be planted following the guidelines of the current Technical Manual as applicable.

~~D.~~E. Prior to approval, a person proposing to create a Forest Mitigation Bank shall submit to the Department a:

(1) Completed application on the form provided by Washington County which has been signed by all property owners or an agent who is authorized by notarized affidavit delegating such authority from the owners to the agent.

(2) Forest Mitigation Bank Plan which must be drawn to scale and contain a:

(a) Vicinity map of the proposed mitigation bank site;

(b) A forest stand delineation which meets the criteria in Section 5.2 of this ordinance if existing forest is to be protected.

(c) Copy of a deed to the property;

(d) A survey or other legally sufficient description of the bank for inclusion in the deeds of easement, deed restrictions or covenants, verifying and supporting the boundaries shown on the Plan;

(e) A title report or other assurances that verifies:

(1) The property is not encumbered by any covenants or other types of restrictions which could impair the property's use as a Forest mitigation Bank or a release from interest holders (if there is another encumbrance on the property, a subordination agreement will need to be submitted); and

(2) There is legally sufficient access to the Forest Mitigation Bank site which can be used by the County and its assignees to inspect the Forest Mitigation Bank

~~(e)~~(f) Detailed planting plan, if indicated, which shall include a timetable and description of the site and soil preparation needed, existing site conditions, soil types, contours and areas of steep slope, floodplain, boundary of proposed easements with metes and bounds, species, size and spacing to be utilized, prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01a.

(3) For Mitigation Banks that contain new plantings, a binding two ~~(2)~~or three-year maintenance agreement as described in Section 6.3 A(1-8) that:

(a) Sets forth how the areas planted will be maintained to ensure protection and satisfactory establishment and survival, and;

(b) Includes watering, fertilization, invasive control measures, and reinforcement planting provisions if survival falls below required standards and;

~~(c)~~ The method and amount of any surety. ~~and;~~

~~(d) A copy of the deed to the property and;~~

~~(e) A survey or other legally sufficient description of the bank site for inclusion in the deeds of easement, deed restrictions or covenants, verifying and supporting the boundaries shown on the plan and;~~

~~(f) A title report or other assurance that verifies:~~

~~(1) The property is not encumbered by any covenants or other types of restrictions which could impair the~~

~~property's use as a Forest Mitigation Bank or a release from interest holders and;~~

~~(2) There is legally sufficient access to the Forest Mitigation Bank site which can be used by the County and its assignees to inspect the Forest Mitigation Bank and;~~

~~(g) Description of the system to be used by the person owning and operating the Forest Mitigation Bank to identify and keep track of the portions of the bank that will be debited to meet an applicant's mitigation requirements and the applicant's contact information.~~

F. The proposed Forest Mitigation Bank shall be presented to the Planning Commission at a meeting open to the public. The Planning Commission will make a recommendation to the Board of County Commissioners of Washington County in favor or against the establishment of the Forest Mitigation Bank. The Board of County Commissioners will then act upon the matter at a meeting open to the public.

~~E.~~G. The owner of an approved Forest Mitigation Bank shall enter into an agreement with Washington County which contains:

(1) The approved afforestation or reforestation plan;

(2) The approved system for marking and tracking the portions of the bank that will be debited and;

~~(3)~~ An acknowledgement that credits cannot be debited from a Forest Mitigation Bank to meet forest mitigation requirements for a development project under current review until the Board of County Commissioners of Washington County has given their final approval and all required legal documentation has been signed and recorded in the Land Records of Washington County. For planted Forest Mitigation Banks, the bank may not debit any portion of the newly planted forest until two ~~(2)~~ or three years of successful growth has been achieved, the site has been inspected by Washington County and determined to meet a specified survival rate and the security has been released.

(a) Required legal documentation includes an easement plat prepared by a licensed land surveyor with a metes and bounds description and area tabulation of the entire bank acreage; the Forest Mitigation Bank Deed of Easement shall be signed and recorded along with the appropriate exhibits (Description of Easement Property and

Declaration of Maintenance and Inspection Covenants, Conditions, and Restrictions; also any subordination agreements if applicable)

~~F.~~H. Protective signage shall be installed around the boundaries of the Forest Mitigation Bank within 30 days of final forest bank plat approval in accordance with Article 14, and the Department shall be notified for inspection.

20.2 PAYMENT BY CREDITS FROM A FOREST MITIGATION BANK

A. If a person subject to this ordinance demonstrates to the satisfaction of the Planning Commission that requirements for afforestation or reforestation on-site or off-site cannot be reasonably be accomplished according to the priorities in Article 10 of this ordinance the person may contribute credits from a Forest Mitigation Bank. A credit is required for each tenth of an acre of required mitigation.

B. Credits from a Forest Mitigation Bank shall be applied to planting requirements according to the Preferred Sequence of Techniques of Mitigation contained in Section 10.1 of this ordinance.

C. Proof of purchased credits from an approved Forest Mitigation Bank must be provided as follows:

(1) For a subdivision, evidence of the intent to use Forest Mitigation Bank credits and availability for purchase must be provided before Planning Commission approval of a subdivision. ~~Proof of payment must be provided prior to the affixation of the signature evidencing the Planning Commission approval of the subdivision and plat recordation~~.

(2) For a lot of record when a site plan is required, evidence of the intent to use Forest Mitigation Bank credits and availability for purchase must be provided before Planning Commission approval of the site plan. ~~Proof of payment must be provided prior to the affixation of the signature evidencing the Planning Commission approval.~~

(3) For a subdivision or lot of record, ~~proof of payment~~a Notice of Forest Banking Credit Transaction for Forest Mitigation Bank credits must be ~~provided~~ recorded prior to ~~issuance of a building permit~~the approval of a final plat of subdivision or site plan.

~~(3)~~(4) Any financial agreements between persons regarding approved forest bank transfers shall occur solely as a private transaction. Neither the Department nor the County shall become a party to the financial aspects of any transfers.

20.3 RELEASE OF UNCOMMITTED FOREST MITIGATION BANK ACREAGE

A. Upon application from a Forest Mitigation Bank owner, the Board of County Commissioners may release uncommitted forest bank acreage from the terms of the easement and deed restrictions referenced in Section 20.1~~ C (2) and (3)~~.

B. Uncommitted acreage shall be defined as the total acreage of the mitigation bank covered by the easement and deed restrictions minus the total area in the mitigation bank for which credits have been debited.

C. If the Board of County Commissioners approves the release of the uncommitted acreage in the Forest Mitigation Bank the applicant must provide a plat prepared by a licensed land surveyor with a metes and bounds description and area tabulation of the entire bank acreage, acreage committed and uncommitted acreage to be released.

D. If approved, the acreage shall not be considered released and free of easement restrictions until proof of recordation of the release documents is provided to Washington County.

E. If approved, the applicant shall be responsible for the cost of preparation and recordation of all documents necessary to complete the release.

ARTICLE 21 BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES

A. The Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

FCO-26-001 **June 1, 2026**

WASHINGTON COUNTY ZONING ORDINANCE
STAFF REPORT AND ANALYSIS

ARTICLES 2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 21

Proposal: Application is being made to amend multiple sections of the Forest Conservation Ordinance (FCO) to comply with the requirements of Maryland Senate Bill 256 (SB 256) and to provide clarification of existing regulations currently found in the FCO to meet the intent of Maryland's Forest Conservation Act (FCA).

Background:

The proposed amendments are primarily mandated by SB 526, passed in 2023. Subsequent amendments under HB1511 required that most changes under the original bill be adopted by counties by July 1, 2026. These changes represent the most significant updates to the statewide Forest Conservation Act in 30 years.

The genesis for this legislation was a statewide Technical Study on Changes in Forest Cover and Tree Canopy in Maryland released in 2022. This study was mandated by HB 991 in 2021. The study was the most comprehensive look at changes to forest cover in Maryland since the passage of the Forest Conservation Act in 1991, using higher resolution aerial imagery than had previously been available. Among other goals, the purpose of this study was to evaluate the effectiveness of forest protection laws in Maryland over the last 20 years, and to track progress towards the state's commitment to completing its portion of the Chesapeake Bay Agreement.

To briefly summarize a complex document, what this study revealed is that state laws such as the Forest Conservation Act have been effective in stabilizing forest loss across Maryland overall, particularly in the last ten years, despite a growing population. The positive nature of this overall trajectory is mitigated somewhat, however, by a concurrent trend revealed in the study which notes a replacement in *forest cover* with what the study terms "*tree canopy outside of forests*." The latter term refers to the trend towards forest fragmentation. Fragmented forests do not offer nearly the same benefits to people and wildlife as contiguous blocks of intact forest cover. The legislation, therefore, seeks to further strengthen forest protection in Maryland to meet the increasingly complex challenges of tomorrow as they relate to land use.

Analysis:

Numerous changes to the Ordinance are proposed as part of SB 256 requirements, more than can be quickly summarized in this introductory staff report. The following are some of the major provisions slated to take effect statewide:

1. **Changes to Forest Mitigation Ratios**
    a. Forest cleared for development must now be replaced at 1:1 ratio (1 acre planted for every 1 acre removed) unless in a Priority Funding Area (and not containing a priority retention area), in which case mitigation will be a 0.5:1 ratio. Formerly 1/4 acre planted for each acre removed to a certain threshold of forest clearing, at which point it changed to 2 acres planted for 1 acre cleared.

2. **New Qualified Exemptions**
    a. Qualified exemptions related to transit-oriented development, multi-family housing and solar photovoltaic facilities mean these types of projects are now responsible only for reforestation requirements (replacement of trees cleared), not afforestation (the planting of trees where no or little forest exists on-site to meet minimum thresholds).

3. **Expanded Priority Areas for Retention**
    a. Existing forests in urban areas and in high value watersheds are among the new areas prioritized for retention during development.

4. **Expanded Opportunities for Public Review and Challenge**
    a. Forest clearing that takes place in the expanded priority retention areas will now sometimes require public notice and/or comment as part of project approval.

5. **Minimum Distances for Stream Buffers**
    a. Intermittent streams must be buffered at least 50 feet from the stream channel while perennial streams must be buffered at least 100 feet from the stream channel. Unforested stream buffers will need to be planted as part of the project's mitigation.

In addition to the state-mandated changes to the FCO, additional changes have been proposed by staff to text in the Ordinance. These changes are necessary to modernize our Ordinance, as it has never been comprehensively amended since its adoption locally in 1993. Many references remain in the Ordinance that are now obsolete, and time has clarified how the Department of Planning and Zoning administers this Ordinance on a day-to-day basis with far

greater clarity than was possible thirty years ago. Accordingly, staff changes are needed to bring our Ordinance into compliance with state law as it has evolved over that period of time in total, and not just in response to the latest bill. These changes can be characterized as cleanup and clarification amendments to existing Ordinance language, more so than adding significant new requirements or restrictions to developing land in Washington County.

Staff Recommendation:

The changes proposed to the FCO have been preliminarily reviewed by the Maryland Department of Natural Resources (DNR), the agency responsible for administering the FCA statewide, for their consistency with the requirements of SB 256. The language proposed incorporates all comments received from DNR. Extensive discussions about the proposed language were conducted among Planning and Zoning staff with knowledge of forest conservation regulations prior to arriving at the final changes proposed. We have received letters of support from former Planning and Zoning Director Jill Baker, as well as the Washington County Soil Conservation District. Accordingly, staff recommends approval of these amendments to meet the requirements of SB 256 and to provide consistent implementation of our forest conservation policies and regulations.

Respectfully submitted,

Travis Allen
Senior Planner

WASHINGTON COUNTY SOIL CONSERVATION DISTRICT
1260 Maryland Avenue, Suite 101 • Hagerstown, MD 21740
Phone • (301)797-6821
www.conservationplace.com
facebook.com/wcscd

May 28, 2026

Jennifer D. Kinzer, GISP
Interim Director
Washington County Department of Planning & Zoning
747 Northern Avenue
Hagerstown, MD 21740

RE: Support for the Forest Conservation Act Program (Amendments) –
Washington County/State of Maryland

Dear Ms. Kinzer,

On behalf of the Washington County Soil Conservation District (WCSCD), I am pleased to express our support for the proposed amendments to the Washington County Forest Conservation Act Program based upon amendments required by the State of Maryland.

Our organization works closely with Washington County across several programs and is committed to supporting implementation of the proposed amendments as they are incorporated into the program and related guidance documents.

The WCSCD plays a key role in protecting the region's natural resources through programs, such as, the Forest Conservation Act Program. We work with landowners, farmers, municipalities, and community partners to promote soil and water conservation, forest stewardship, long-term watershed health, and sustainable land management throughout Washington County.

District Board of Supervisors

Harry E. Strite *Chair*
Ariel L. Herrod *Vice-Chair*
J. Scott Shank, III *Treasurer*
Edward C. Wurmb, D.V.M. *Supervisor*
Joshua C. Ernst *Supervisor*
Boyd J. Michael, III *Associate*
Kirk E. Winders *Associate*
James M. Kriner *Associate*

We believe these amendments will strengthen the existing program and, in some cases, compliment, our role in reviewing sensitive areas on proposed development sites.

We look forward to continuing our support of Washington County as these amendments are implemented.

Sincerely,

Denise D. Price, CESSWI, CSI
District Manager

WASHINGTON COUNTY PLANNING COMMISSION
REZONING PUBLIC INPUT AND REGULAR MEETING
July 6, 2026

The Washington County Planning Commission held its regular monthly meeting on Monday, July 6, 2026 at 6:00 p.m. at the Washington County Administrative Complex, 100 W. Washington Street, Room 2000, Hagerstown, MD.

CALL TO ORDER AND ROLL CALL

The Chairman called the meeting to order at 6:00 p.m.

Planning Commission members present were: Jeff Semler, Chairman, Jay Miller, Vice-Chairman, Laura Lane-Unsworth, BJ Goetz, Doug Wright, Jr. and Ex-officio County Commissioner Randy Wagner. Staff members present were: Washington County Department of Planning & Zoning: Alyssa Sabetto, Director; Jennifer Kinzer, Deputy Director; Travis Allen, Senior Planner; Misty Wagner-Grillo, Planner; and Debra Eckard, Office Manager.

NEW BUSINESS

MINUTES

Motion and Vote: Mr. Miller made a motion to approve the minutes of the June 1, 2026 Planning Commission meeting as presented. The motion was seconded by Ms. Lane-Unsworth and unanimously approved, with Mr. Goetz and Commissioner Wagner abstaining from the vote.

ORDINANCE MODIFICATION

Hope Valley Farm [OM-26-002]

Ms. Wagner-Grillo presented an ordinance modification for Hope Valley Farm located at 1055 Valley Road in Knoxville. The property is 29.7 acres in size and is zoned EC (Environmental Conservation). The owners operate their business called "Wild Sprouts" which is a nature based educational facility, as well as a self-pick flower farm and farmstand. On December 18, 2024, the Board of Zoning Appeals held a public hearing for a special exception request for an environmental conservation education and banquet/reception facility and for a variance for off-street parking requirements. Proposed events will be hosted in the farm accessory building. The request was granted by the BZA; however, the Engineering Department at that time sent correspondence regarding road adequacy to the BZA. A minor site plan was submitted to the Department of Planning & Zoning on April 17, 2025 for this permitted use. During the minor site plan review (which is still on-going), the Engineering Department commented that Valley Road was inadequate for additional commercial development without improving it to 18 feet in width. The width is based on the number of trips the business would generate. Valley Road currently ranges from 15.6 feet to 24 feet in width. The Engineering Department, in its comments, is requiring the owners to widen sections of the road that are not 18-feet in width along the property lot frontage to the nearest road that is adequate (State Route 340).

The owners are requesting a modification from Article 4, Section 4.3 of the Adequate Public Facilities Ordinance (APFO) which requires all new development to be served by an adequate network of existing and proposed new roads. The owners are asking the Planning Commission to allow them to proceed with the business without improving Valley Road to 18-feet in width. Ms. Wagner-Grillo stated that if the Planning Commission were to approve the modification, the Engineering Department is requesting that a special condition be placed on the approval that the owners will be required to widen the pavement along the property frontage to a minimum of 18-feet.

Discussion and Comments: Mr. Goetz asked if the banquet/event facility will be tied to the educational facility. Mr. Fred Frederick of Frederick, Seibert & Associates, the consultant, stated that the BZA, in its approval, limited the business to one event per weekend from April 1st to October 30th each year. There is a limit of 99 people that can attend the events, including staff.

There was more discussion regarding the minimum requirement that the Engineering Department is requesting. Mr. Frederick stated that the BZA discussed the width of Valley Road in great detail during its public hearing. The BZA acknowledged that this business will not be detrimental to the area. He believes that the variation in width brings traffic calming to Valley Road. In his estimation, it would cost the owners approximately $250,000 to widen the road to 18-feet. Mr. Frederick noted that traffic counts were performed on Valley Road in front of the property for one week while school was still in session, May 18th to 26th, with an average ADT of 125 at this location.

Motion and Vote: Mr. Wright made a motion to approve the ordinance modification request with no road improvements or exceptions. The motion was seconded by Mr. Goetz and unanimously approved.

SITE PLANS

Bridgestone – Hagerstown [SP-25-047]

Ms. Wagner-Grillo presented a site plan for the proposed construction of a Bridgestone auto repair business on 1.85 acres located at 13324 Pennsylvania Avenue. The property is zoned BG (Business General). The existing 19,749 sq. ft. building will be demolished; the proposed building will be 6,607 sq. ft. Parking required is 26 spaces; 30 spaces will be provided. Ten to twelve employees are proposed. The hours of operation will be 7 am to 7 pm, Monday through Saturday and 9 am to 5 pm on Sunday. One freestanding sign is proposed. Lighting will be building mounted and pole mounted; a photometric plan was included in the site plan submittal. Water service will be provided by the City of Hagerstown; sewer service will be provided by Washington County. Landscaping is proposed along the parking space in front of Pennsylvania Avenue while existing vegetation at the rear of the property will remain. Storm water management requirements will be met by a micro-bioretention facility on site. Forest Conservation requirements will be met by a payment-in-lieu of planting in the amount of $3,659.04.

Discussion and Comments: Mr. Wright asked if the photometric plan included the lighting from the signs. Ms. Wagner-Grillo stated that generally the photometric plan only includes the building mounted and pole mounted lights. Mr. Wright believes that internally lit signs should be included in the photometric plans in the future.

Mr. Wright asked if some of the space behind the building could be used for Forest Conservation. It was noted that a large sanitary sewer easement is located there. Mr. Allen stated that the developer was eligible for the "express procedure" which does not require Planning Commission approval for the mitigation.

Mr. Miller asked about the movement of large trucks within the site. It was noted that movements were run that will allow the trucks full access to the site.

Motion and Vote: Mr. Miller made a motion to approve the site plan as presented. The motion was seconded by Mr. Goetz and unanimously approved.

FOREST CONSERVATION

Jamison Door [GP-26-007]

Mr. Allen presented two requests to meet forest conservation requirements on property located at the intersection of Yale Drive and Professional Boulevard. The developer is proposing the construction of a large industrial facility at this location and is requesting the establishment of an offsite easement to meet the majority of the project's planting requirements and to remove four specimen trees from the site. The 7.45-acre total planting requirement is a result of the disturbance of 24.18 acres of land. Mr. Allen noted that all acreage not being used for development has been utilized for onsite retention or planting purposes and the offsite easement being proposed is immediately outside the Urban Growth Area close to the same watershed. The off-site easement will consist of 12.88 acres of forest. Mr. Allen stated that the specimen trees are located where substantial grading will occur. Storm water management features will mitigate water quality impacts from the removal of these trees.

Motion and Vote: Mr. Goetz made a motion to approve the off-site mitigation and the removal of four specimen trees. The motion was seconded by Mr. Miller and unanimously approved.

OLD BUSINESS

Washington County Board of County Commissioners [FCO-26-001]

Mr. Allen reminded members that a public input meeting was held on June 1, 2026 to consider amendments to the Forest Conservation Ordinance. These amendments are primarily mandated by the passage of SB256 (required to be adopted by July 1, 2026 by Maryland counties). In addition to the State-mandated changes, additional changes were recommended by staff to bring the Ordinance in compliance with State regulations that have evolved over the past 30 years. Two letters of support were received prior to the public input meeting, one verbal comment in support was made during the public input meeting, and two letters (neither in support or in opposition) were received following the public input meeting primarily asking for clarification on the Federal facilities exemption (included in the Federally mandated changes) and changes to the mitigation ratio in Priority Funding Areas; staff has responded to these inquiries.

Motion and Vote: Mr. Miller made a motion to recommend to the Board of County Commissioners approval of the proposed amendments as presented. The motion was seconded by Ms. Lane-Unsworth and unanimously approved with Commissioner Wagner abstaining from the vote.

OTHER BUSINESS

Update of Projects Initialized

Ms. Kinzer provided a written report for land development plan review projects initialized during the month of May including 4 site plans.

Ms. Kinzer announced that the Board of County Commissioners approved a 12-month moratorium on data centers so the subject can be further studied and refined in anticipation of changes to the Zoning Ordinance in the future. The Board also discussed extending the moratorium beyond 12 months, if needed. A data center impact analysis and assessment is currently being undertaken in Frederick County. Following a brief discussion, members recommend working closely with the City of Hagerstown to present a united front and would like to be involved throughout the decision-making process.

ELECTION OF OFFICERS

Motion and Vote: Mr. Goetz made a motion to nominate Mr. Semler as the Chairman and Mr. Miller as the Vice-Chairman. The motion was seconded by Ms. Lane-Unsworth and unanimously approved.

ADJOURNMENT

Mr. Miller made a motion to adjourn the meeting at 6:55 p.m. The motion was seconded by Ms. Lane-Unsworth and so ordered by the Chairman.

UPCOMING MEETINGS

1. August 3, 2026, 6:00 p.m. – Washington County Planning Commission regular meeting

Respectfully submitted,

Jeff Semler, Chairman

WASHINGTON COUNTY PLANNING COMMISSION
REZONING PUBLIC INPUT AND REGULAR MEETING
June 1, 2026

The Washington County Planning Commission held a rezoning public input meeting and its regular monthly meeting on Monday, June 1, 2026 at 6:00 p.m. at the Washington County Administrative Complex, 100 W. Washington Street, Room 2000, Hagerstown, MD.

CALL TO ORDER AND ROLL CALL

The Chairman called the rezoning public input meeting to order at 6:00 p.m.

Planning Commission members present were: Jeff Semler, Chairman, Jay Miller, Vice-Chairman, Terrie Shank, Laura Lane-Unsworth, and Doug Wright, Jr. Staff members present were: Washington County Department of Planning & Zoning: Jennifer Kinzer, Interim Director; Travis Allen, Senior Planner; Kyla Shingleton, Comprehensive Planner; Misty Wagner-Grillo, Planner; and Debra Eckard, Office Manager.

REZONING PUBLIC INPUT MEETING

Washington County Board of County Commissioners [FCO-26-001]

Mr. Allen presented a text amendment application to amend several sections of the Forest Conservation Ordinance to comply with requirements of Maryland Senate Bill 256 (SB 256) and to provide clarification of existing regulations currently found in the Ordinance to meet the intent of Maryland's Forest Conservation Act. The majority of proposed amendments are mandated by SB 256 which was passed in 2023. Subsequent amendments under House Bill 1511 require that most of these changes under the original bill be adopted by July 1, 2026. These changes represent the most significant update to the Statewide Forest Conservation Act in 30 years. A statewide Technical Study on Changes in Forest Cover and Tree Canopy in Maryland was released in 2022, which mandated HB 991 in 2021. The Study was completed using higher resolution aerial imagery than has previously been available and was the most comprehensive study of changes in forest cover since 1991. The purpose of the Study was to evaluate the effectiveness of forest protection laws in Maryland over the last 20 years and to track progress of the State's commitment to completing its portion of the Chesapeake Bay Agreement.

Mr. Allen briefly noted that State laws, such as the Forest Conservation Act have been effective in stabilizing forest loss across the State overall, particularly in the last 10 years, despite a growing population. He noted that the positive nature of this trend is somewhat mitigated by a concurrent trend which revealed a replacement in forest cover with what the Study terms *"tree canopy outside of forests"*. This refers to a trend known as *"forest fragmentation"*. Fragmented forests do not off the same benefits to people and wildlife as contiguous blocks of intact forest cover.

Mr. Allen summarized some of the major provisions that will take effect Statewide as follows:

1. **Changes to forest mitigation ratios**: Forest cleared for development must be replaced at 1:1 ratio unless in a Priority Funding Area (and not in a priority retention area), in which case mitigation will be a 0.5:1 ratio.
2. **New Qualified Exemption**: Qualified exemptions related to transit-oriented development, multi-family housing and solar photovoltaic facilities mean these types of projects are now responsible for reforestation requirements, not afforestation.
3. **Expanded Priority Areas for Retention**: Existing forests in urban areas and in high value watersheds are among the new areas prioritized for retention during development.
4. **Expanded Opportunities for Public Review and Challenge**: Forest clearing that takes place in the expanded priority retention areas will now sometimes require public notice and/or comment as part of the project approval.
5. **Minimum Distances for Stream Buffers**: Intermittent streams must be buffered at least 50 feet from the stream channel while perennial streams must be buffered at least 100 feet from the stream channel. Unforested stream buffers will need to be planted as part of the project's mitigation.

In addition to the state-mandated changes, staff are proposing other changes to the Ordinance to provide clarification and to clean up the existing text in the Ordinance. Mr. Allen noted that a comprehensive amendment to the Ordinance has not occurred since its adoption in 1993. Time has clarified how we administer the Ordinance on a day-to-day basis with far greater clarity than was possible 30 years ago.

The proposed changes have been preliminarily reviewed by the Department of Natural Resources (DNR) for consistency with requirements of SB 256. DNR is the agency responsible for administering the Forest

Conservation Act statewide. The proposed language incorporates all comments received from DNR. Letters of support have been received from Jill Baker, the former Director of Planning & Zoning and the Washington County Soil Conservation District. Staff recommend approval of these proposed amendments to meet requirements of SB 256 and to provide consistent implementation of forest conservation policies and regulations.

Discussion and Comments: There was a brief discussion regarding farmers clearing land to use in their farming operations. Mr. Allen stated that if the land is being used for farming operations, they would be exempt from forestation requirements; however, if the land is cleared to be used for a use such as a wedding venue then forestation would be required.

There was a brief discussion regarding the new public notification requirement. Mr. Allen explained that disturbance of forest in specific priority retention areas, such as: forested urban areas, high value watershed areas, forest suitable for interior forest dwelling species and stream buffers would require public notification. Notification could be made by mailing letters to affected property owners and allowing public comment via e-mail or standard mail. If more than 75% of the priority area is being cleared a public meeting for verbal comment would be required. If the Planning Commission would deny a request, the developer would need to seek other forest conservation measures.

Public Comment

Ms. Jill Baker, Williamsport – Ms. Baker spoke in favor of the proposed amendments. She noted that the State is trying to prevent forest fragmentation by providing many options for developers to retain or mitigate disturbed forest. She encouraged the Planning Commission to review each project on an individual basis and consider the proposed technique(s) chosen by the developer for mitigation.

Mr. Semler closed the Public Input Meeting at 6:23 p.m. and called the regular meeting to order.

NEW BUSINESS

MINUTES

Mr. Wright requested a change to the minutes of May 4, 2026.

Motion and Vote: Mr. Miller made a motion to approve the minutes of the May 4, 2026 Planning Commission meeting as amended. The motion was seconded by Ms. Shank and unanimously approved.

PRELIMINARY PLAT/SITE PLAN

Home2Suites – South Hagerstown [PSP-25-003]

Ms. Wagner-Grillo presented a preliminary plat/site plan for a proposed 4-story, 105-room hotel with a footprint of 25,200 square feet at 18565 Champs Crossing Drive. Lot 4 is 2.39-acres and is currently zoned HI (Highway Interchange). Water service will be provided by the City of Hagerstown and sewer service will be provided by Washington County. Storm water management will be handled through an off-site pond east of the McDonald's. Hours of operation will be 24 hours/day, 7 days/week; 20 employees are proposed. Parking required is 106 spaces; parking provided will be 112 spaces. Lighting will be pole and building mounted; a photometric plan has been submitted with the site plan. Pylon pole and building mounted signs are proposed. Landscaping will be provided around the building and throughout the parking area. Forest Conservation requirements were mitigated on a previously approved plat using off-site forest mitigation. All agency approvals have been received.

Discussion and Comments: Mr. Wright expressed his opinion that sidewalks should be provided for ease in access to other businesses in the area.

Mr. Semler asked if storm water management has been sized to accommodate Lots 3 and 5. Ms. Wagner-Grillo stated it can accommodate the remaining lots.

Mr. Miller expressed his concern that the County continues to approve projects and also continues to discuss the lack of water and sewer capacity. Ms. Kinzer stated that the City of Hagerstown as well as the County's Department of Water Quality have reviewed and approved this plan. She explained that this does not guarantee services; however, it indicates there is still allocation available. Allocation is given on a first-come/first serve basis.

Motion and Vote: Mr. Miller made a motion to approve the preliminary plat/site plan as presented. The motion was seconded by Ms. Lane-Unsworth and unanimously approved.

FOREST CONSERVATION

Fulton Forest Conservation Plan [TWN-26-010]

Mr. Allen presented two requests to meet forest conservation requirements on property located on Conococheague Street in Williamsport. The first request is to provide a payment-in-lieu of planting for 1.16-acres and the second request is to remove one specimen tree. The developer is proposing a gravel parking lot for tractor trailer parking in the Town of Williamsport. Mr. Allen explained that the County approves forest conservation requirements in the Town while the Town will approve the site plan. He noted that under normal circumstances, this project would qualify for the express procedure without Planning Commission approval. However, because the developer is requesting the removal of one specimen tree, the Planning Commission must approve the payment-in-lieu of request. The Forest Conservation Plan indicates the retention of forest on-site in existing floodplains; the remaining existing forest that is not being put under easement is located within a utility easement that precludes retention. The specimen tree is located in a centralized area of the site which makes retention very difficult. One specimen tree will be retained on the site.

Discussion and Comment: Mr. Miller asked if off-site retention on another parcel was considered. Mr. Allen noted that typically this developer does as much on-site retention as possible then requests the payment-in-lieu of planting to meet the remaining mitigation requirements. He reminded members that if the specimen tree removal was not requested, this project would be eligible for express approval without the Planning Commission's approval. Mr. Miller stated he is not in favor of approving the payment-in-lieu of planting request.

Motion and Vote: Mr. Miller made a motion to approve the request to remove one specimen tree. The motion was seconded by Mr. Wright and unanimously approved.

Motion and Vote: Ms. Shank made a motion to deny the payment-in-lieu of planting request and require reforestation. The motion was seconded by Ms. Lane-Unsworth.

Discussion before the vote: Mr. Allen asked for clarification if the Planning Commission wants the developer to provide mitigation on-site or use a different technique of mitigation.

Amended Motion and Vote: Ms. Shank made a motion to deny the payment-in-lieu of planting request and require another mitigation technique. The motion was seconded by Ms. Lane-Unsworth and unanimously approved.

OLD BUSINESS

Cascade Properties LLC [RZ-26-002]

Staff Presentation

Ms. Shingleton stated that a proposed text amendment to the Special Economic Development zoning district, Article 19, Sections 19c.2, 19c.3, 19c.6 and 19c.7 of the Washington County Zoning Ordinance was submitted. The proposed amendments to Article 19 of the Zoning Ordinance would include newly permitted and special exception uses as well as residential setbacks and design criteria which would allow for more opportunities, redevelopment and revitalization of the former Fort Ritchie Army Base.

Discussion and Comment: Mr. Wright expressed his opinion that Section 19.C.2 should not include electroplating or other uses that would put more serious chemical discharge into the sewage system. He believes those types of activities should occur in more industrialized areas in the County.

Ms. Kinzer reminded members that variety stores were stricken as a principally permitted use by the applicant during the public input meeting.

Motion and Vote: Mr. Miller made a motion to recommend approval to the Board of County Commissioners the proposed text amendment with electroplating and variety stores stricken from the text. The motion was seconded by Mr. Wright and unanimously approved.

Michael Godinez/Dominion Realty LLC [RZ-26-003]

Ms. Shingleton stated a proposed map amendment for properties located at 18128 and 18132 Maugans Avenue was submitted. The applicant is proposing to rezone the properties from RM (Residential Multi-family) to HI (Highway Interchange). The applicant is claiming a mistake in the original zoning of the property as well as a change in the character of the neighborhood. In the case of mistake, the applicant

contends that the County erred in rezoning the properties due to the inconsistent application of the HI-1 zoning classification to properties along Maugans Avenue during the 2002 comprehensive rezoning. In the case of substantial change in the character of the neighborhood, the applicant contends there has been an increase in average daily traffic on Maugans Avenue and substantial commercial development in close proximity of the subject parcels.

Due to the reasons stated above, Staff believes it is logical to apply the Highway Interchange zoning classification to these properties based on the separation from the neighborhood that is currently zoned RM (Residential Multi-family) and the close proximity to other commercial uses.

Discussion and Comment: Mr. Semler does not believe there was a mistake in the original zoning; however, he does believe there has been a change in the character of the neighborhood.

Motion and Vote: Mr. Miller made a motion to recommend approval of the proposed map amendment to the Board of County Commissioners based on a change in the character of the neighborhood. The motion was seconded by Ms. Shank and unanimously approved.

OTHER BUSINESS

Annual Report

Ms. Kinzer presented the 2025 Annual Report which is required by the Maryland Department of Planning (MDP). She briefly highlighted sections of the Report. During 2025, 63% of the County's permits were issued in six PFAs (Priority Funding Areas), which is where the State wants development focused and 37% were outside the PFA (in the rural area). The County goal in the 2002 Comprehensive Plan was 80% in the PFAs and 20% in the rural areas (80/20 ratio); the 2040 Comp Plan goal is an 85/15 ratio. This goal continues to follow State guidance to keep development where services are available and on smaller lots leaving more of the rural community untouched.

Update of Projects Initialized

Ms. Kinzer provided a written report for land development plan review projects initialized during the month of April including 12 site plans. She also noted that the final plat for the Village at Valencia – Phase I has been submitted.

ADJOURNMENT

Mr. Miller made a motion to adjourn the meeting at 7:25 p.m. The motion was seconded by Ms. Lane-Unsworth and so ordered by the Chairman.

UPCOMING MEETINGS

1. July 6, 2026, 6:00 p.m. – Washington County Planning Commission regular meeting

Respectfully submitted,

Jeff Semler, Chairman