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*City of Annapolis*

**DEPARTMENT OF NEIGHBORHOOD & ENVIRONMENTAL PROGRAMS**

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May 15, 2015

**MEMORANDUM**

**TO:** Tom Andrews, City Manager

**FROM:** Frank Biba, Chief, Environmental Programs

**RE:** Comparison of Forest Conservation Act Ordinances.

As discussed, below is a comparison of the more significant differences between the FCA Model Ordinance (similar to the Forest Conservation Working Group proposed Ordinance), the first iteration of O-32-14 (initially O-21-14), and the current proposed O-32-14 Amended (as amended by the Planning Commission).

**DEFINITIONS**

**“Department”**

FCA MO “...means the Department charged with implementing the local forest conservation program.”

O-32-14 “...means the City of Annapolis Department of Neighborhood and Environmental Programs” is charged with implementing the forest conservation program.

O-32-14 A “...means the City of Annapolis Department of Planning and Zoning” is charged with implementing the forest conservation program.

**“Forest Conservation Technical Manual”**

FCA MO “...means the (name of jurisdiction) technical manual incorporated by reference, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.”

O-32-14 “...means the City Forest Conservation Technical Manual that is used to establish standards of performance required in preparing forest stand delineations and forest conservation plans. At any tie that the City does not have a Technical Manual, the City shall adhere to the State Forest Conservation Manual, if adopted by the Department, and any amendments thereto as the Department shall adopt from time to time, shall have the force of law and shall not require City Council review or approval. The language in any City of Annapolis Technical Manual, including amendments, that exists on the date

of an application for forest conservation plan approval shall be the language that governs the application.”

O-32-14 A “...means the City Forest Conservation Technical Manual that is used to establish minimum standards associated with preparing forest stand delineation and forest conservation plan. The standards in the City Forest Conservation Technical Manual, including amendments, which exist on the date a forest conservation plan is submitted, shall constitute the minimum standards required for approval of a forest conservation plan. Until such time as the City adopts a forest conservation technical manual, the City shall use the standards set forth in the State Forest Conservation Technical Manual as minimum standards. A City Forest Conservation Technical Manual and any amendments thereto shall require City Council review and approval.”

### “Healthy Forests”

FCA MO Not included. The definition originated with the Forest Conservation Working Group proposed Ordinance.

O-32-14 “...means a biological community where trees and other woody plants dominate and cover a land area of 10,000 square feet or greater, with at least 70% canopy closure, adequate tree stocking, noticeable tree recruitment (including mid-to-late successional species), less than 35% area coverage of invasive species, and relatively free of insect, disease, storm, and other damage (less than 45% canopy mortality), as the City Environmentalist shall so determine.”

O-32-14 A “...means a biological community where trees and other woody plants dominate and cover a land area of 10,000 square feet or greater, with at least 70% canopy closure, tree recruitment, including mid-to-late successional species, sufficient for a forest to sustain itself without intervention, less than 35% area coverage of invasive species, and not endangered by insect, disease, storm, or other damage, as the Department shall so determine.”

### “Net Tract Area”

FCA MO “A. Except in agriculture and resource areas, the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by that area where forest clearing is restricted by another local ordinance or program:

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 that area where forest clearing is restricted by another local ordinance or program; and

C. For a linear project:

- (1) The area of a right-of-way width, new access roads, and storage; or
- (2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.”

O-32-14 "A. Excluding agriculture and resource areas, the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by that area where forest clearing is restricted by this chapter or another program

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 that area where forest clearing is restricted in this chapter or another program;

C. Same as FCA MO

O-32-14 A A, B and C Same as O-32-14

#### **"Priority Retention Area"**

FCA MO Cross references NRA 1607(C)(1) that includes (C)(2)(ii) "Trees having a diameter measure at 4.5 feet above the ground, 30 inches or 75% 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."

O-32-14 "...means a development area which includes specimen trees of 24 inches or greater Diameter at Breast Height (DBH)."

O-32-14 A Similar to NRA 1607(C)(1) and including "Trees having a DBH of 24 inches or a DBH or 75% of the current State Champion."

#### **"Regulated Activity"**

FCA MO "...means any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

- A. Subdivision;
- B. Grading;
- C. An activity that requires a sediment control permit; or
- D. Project plan of a local agency."

O-32-14 "...means any of the following activities, when such activity occurs on a unit of land which is 30,000 square feet or greater:

- A. Subdivision;
- B. Grading;
- C. Tree clearing, cutting or destruction;
- D. A local agency's project plan;
- E. Planned development; or
- D. An activity where a sediment control permit is required."

O-32-14 A "...means any of the following activities occurring on a unit of land which is 40,000 square feet or greater:

- A. Subdivision;
- B. Grading;
- C. Tree clearing, cutting or destruction;
- D. Project plan;
- E. Planned development; or
- F. Activity where a sediment control permit is required."

**"Significant Tree"**

FCA MO Not included

O-32-14 "...means a champion tree, a specimen tree, or a tree located within a forest with a diameter of 24 inches or more, a tree located outside of a forest with a diameter of 12 inches or more, or a tree located within 25 feet of the limits of disturbance with a diameter of six inches or more."

O-32-14 A "...means a champion tree, a specimen tree, or a tree located within 25 feet of the limits of disturbance with a diameter of 24 inches or more."

**"Specimen Tree"**

FCA MO Not included

O-32-14 Not included

O-32-14 A "...means a tree with a diameter equal to or greater than 24 inches or that is 75 percent of the diameter of the State champion tree, or a tree which has been determined by the Department Director to be of notable quality and or high value because of its type, size, age, historical significance, or warrant special consideration and encouragement for preservation."

**"Stream Buffer"**

FCA MO "...means all lands lying within 50 feet, measured from the top of each normal bank of a perennial or intermittent stream."

O-32-14 "...means all lands lying within 100 feet, measured from the top of each normal bank of a perennial or intermittent stream. The buffer may be expanded beyond the 100 foot minimum if the Department determines site conditions warrant an expansion to preserve natural resources including, but not limited to, steep slopes, erodible soils, wetlands, or other sensitive areas."

O-32-14 A Same as O-32-14.

## **“Variance”**

FCA MO “...means relief from Natural Resources Article Sec. 5-1601 - 5-1612, Annotated Code of Maryland, or this Ordinance. Variance does not mean a zoning variance.”

O-32-14 “...is an exemption to one or more requirements in this chapter when the requirement or requirements would result in unwarranted hardship, as defined by applicable law, to the person. Variance does not mean a zoning variance.”

O-32-14 A “...is an exemption granted to a fee owner of a tract from one or more requirements of this chapter. Variance does not mean a zoning variance governed by Chapter 21.28 of the City Code.” It is possible that the “fee owner” is not the applicant/developer.

## **APPLICATION (nt. tract size)**

FCA MO 3.1. Except as provided in Sec. 3.2 or this article, this Ordinance applies to:

- A. A person making application for a subdivision, project plan, grading or sediment control approval on units of land 40,000 square feet or greater after the effective date of this Ordinance;
- B. A public utility not exempt under Sec. 3.2E and F or this article;
- C. A unit of county or municipal government, including a public utility or public works project, making an application for a subdivision, project plan, grading, or sediment control approval on areas 40,000 square feet or greater.

3.2 This Ordinance does not apply to:

(Multiple exceptions)

O-32-14 17.13.020

A. Except as provided for elsewhere in this chapter, this chapter is applicable to:

1. A person submitting an application for a planned development, subdivision, project plan, grading, or sediment control approval on units of land 30,000 square feet or greater;
  2. A person removing any trees on a unit of land 30,000 square feet or greater;
  3. A public utility, unless specifically exempted in this Chapter;
  4. A unit of County or municipal government, including a public utility or public works project, submitting an application for a planned development, subdivision, project plan, grading, or sediment control approval on areas 30,000 square feet or greater;
- B. Any project which has not received an approved final forest conservation plan and an approved final grading permit before the effective date of this

Ordinance shall comply with the requirements of this Chapter and the Forest Conservation Technical Manual. Forest conservation plans not in compliance with this Chapter and the Forest conservation Technical Manual and are undergoing Departmental review as of the effective date of this Ordinance shall be amended, if necessary, to comply with this Chapter and the Forest Conservation Technical Manual.

C. This Chapter shall not be applicable to:

(Many multiple exceptions same as in FCA MO)

Notable Differences are:

6. A residential construction activity conducted on an existing single lot of record at the time of application, or a linear project not otherwise exempted elsewhere in this Chapter, if the activity does not result in the cumulative cutting, clearing, or grading of more than 10,000 square feet of forest (FCA MO is 20,000 square feet), or 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 pursuant to this Chapter;

11 A. When any provision of the State Forest Conservation Act, Chesapeake Bay Critical Area Protection Law, or City Charter and City Code shall conflict, the Department shall employ the law that contains the more restrictive requirements. (Not in the FCA MO)

O-32-14 A 21.71.030 (No reference to tract size)

A. This chapter shall apply to an application submitted by any of the following which has not been approved by the Planning Commission, the Board of Appeals, or the Department, as the case may be, before the effective date of this Ordinance:

1. A person;
2. A public utility, unless specifically exempted in this Chapter;
3. A unit of Federal, State, County or Municipal government, including a public utility or public works project applicant.

B. This Chapter shall not be applicable to:

(Same as O-32-14 except Sec. B 8 and Sec. 11 A is not included)

B. 8. An application which has been finally approved by the Planning Commission, the Board of Appeals, of the Department, as the case may be, within 60 calendar days after the effective date of this ordinance.

## **FOREST STAND DELINEATION**

FCA MO Article V Forest Stand Delineation (summarized) (nt. timeline)

Criteria include a 30 day review period with a 15 day extension if invoked by the local jurisdiction. Determination made by the Department. FCA MO does not require public notice, nor does it require an independent wetlands analysis.

O-32-14 17.13.035 Forest Stand Delineation (summarized) (nt. timeline)

No later than three business days after receipt, posting of the FSD on the Department's website for 30 days for public comment. Department staff have at least 5 business days to consider and incorporate public comments received into their recommendations. An independent analysis by a Certified Wetlands Delineator, paid by the applicant, may be required by the Department. Within 10 business days after staff completes its review, the Department shall may certify the FSD as complete and correct subject to the determination of the City Environmentalist. If the Department determines that revisions to the FSD are required, the Department shall notify the applicant within 10 business days. Upon receipt of revisions, the Department shall have 15 business days for review. The Department may allow itself an additional 10 days for review. Only with the approval of the City Environmentalist does the Department have the authority to render a decision on the FSD. A decision by the Department Director that a FSD is or is not complete and correct is not appealable.

O-32-14 A 21.71.060 Forest Stand Delineation (summarized) (nt. timeline)

Within three business days after receipt of the FSD, the Department shall refer the FSD to DNEP for review and DNEP shall post the FSD on its website within three business days for at least 15 calendar days. The Department and DNEP shall promptly exchange all comments, testimony and documentation received from the public. No later than 30 days after receipt of the FSD, DNEP shall send written notice of its determination to the Department. If DNEP determines that the FSD is complete and correct, the Department shall send written notification of the certification to the applicant within 45 days after receipt of the FSD. If DNEP does not certify the FSD as complete and correct, DNEP shall notify the Department no later than 30 calendar days after the receipt of the FSD. The Department shall notify the applicant of DNEP's lack of certification within 45 days after receipt of the FSD. The Department may allow itself 15 additional calendar days to complete its review or an original or revised FSD upon notification of the applicant. If an initial and revised FSD is not certified as complete and correct and the applicant intends to continue to pursue a certified FSD, the Department shall retain a qualified person for the preparation and delivery of a FSD, with all associated costs to be the responsibility of the applicant. A decision of the Department regarding a FSD is not appealable until a final decision by the Planning Commission, the Zoning Board of Appeals or the Department, as the case may be. The Department shall have a qualified person review the wetland delineation component of the FSD with all costs paid by the applicant. All review comments and certification status made by the Department and DNEP shall be made available online in the City's permit tracking database.

## **FOREST CONSERVATION PLAN**

FCA MO Article VI Forest Conservation Plan (summarized) (nt. timeline)

A preliminary Forest Conservation Plan shall be submitted with the preliminary plan of subdivision or proposed project plan, and shall include the approved FSD. The review of the preliminary FCP shall be concurrent with the review of the

preliminary site plan. The preliminary FCP may be modified during the review process with the approval of the Department. A final FCP shall be submitted with a final subdivision plan, final project plan, an application for a grading permit, or an application for a sediment control permit. Within 45 calendar days after receipt of the final FCP, the Department shall notify the applicant whether the FCP is complete and correct. FCA MO does not require public notice.

O-32-14 17.13.040 Forest Conservation Plan (summarized) (nt. timeline)

A preliminary and final FCP shall be based on a certified FSD. A preliminary and final forest plan shall give priority to and provide for the protection and maintenance of any forest or significant trees within the FSD which the proposed development activity may adversely affect. Where the existing forest and individual significant trees cannot be retained, the FCP shall provide for tree replacement, reforestation and afforestation in accordance with this Chapter and Chapter 17.09 of the City Code. No later than three days after the applicant's submittal, the Department shall post the preliminary FCP on the Department's website for at least 30 business days. The Department shall be given at least 5 working days to consider and incorporate the public comments. The Department shall schedule a public hearing on the preliminary FCP if requested within 20 business days after the posting of the preliminary FCP on the Department's website and the Department shall post notice of the date of the public hearing on the Department's website at least 15 days in advance of the public hearing. Within 45 business days after the Department's website posting for public comment has ended or the completion of the public hearing, whichever is later, the Department shall notify the applicant of its determination on the preliminary FCP. If additional documentation is requested, the Department shall have a 45 calendar days after receipt of such documentation to make a determination. The Department may allow itself 10 additional business days to complete the review of a preliminary FCP. Only with the approval of the City Environmentalist does the Department Director have the authority to approve, suspend or revoke a preliminary FCP. Any decision of the Department Director regarding a preliminary FCP is not appealable. No later than 3 business days after the applicant's submittal of a Final FCP, the Department shall post the Final FCP on the Department's website for at least 30 business days, after which the Department will have 5 business days to consider and incorporate the public comments received. The Department shall schedule a public hearing on the final FCP if requested within 20 business days after the posting of the final FCP on the Department's website, and the Department shall post notice of the date of the public hearing on the Department's website at least 15 days in advance of the public hearing. Within 45 business days after the Department's website posting for public comment has ended or the completion of the public hearing, whichever is later, the Department shall notify the applicant of its determination on the final FCP. The Department may allow itself 10 additional business days to complete the review of a final FCP. Any final decision of the Department regarding the final FCP is appealable to the Building Board of Appeals.



O-32-14 A 21.71.070 Forest Conservation Plan (nt. timeline)  
Consistent with O-32-14 with some exceptions:

A(5) Where the existing forest and individual significant trees cannot be retained, the FCP shall provide for tree replacement, reforestation or afforestation, with no net loss of trees, in the following order of priority: on site; at a location within the watershed of the City of Annapolis; at a location within a watershed in Anne Arundel County as close to the site as practical.

B(4) Before the submission of a preliminary FCP or revised FCP, the applicant shall hold a public meeting.

B(5) Within 3 business days after receipt of a preliminary FCP, the Department shall refer the preliminary FCP to DNEP for review and DNEP shall post it on its website for at least 15 calendar days.

B(6) No later than 35 calendar days after the receipt of the preliminary FCP, DNEP shall send notification of its approval to the Department. If approved, the Department shall notify the applicant within 45 days after receipt of the preliminary FCP.

B(7) If the Department disagrees with DNEP's determination, the Department may override DNEP's recommendation and within 45 calendar days after the receipt of the preliminary FCP notify the applicant of necessary revisions.

B(9) When a preliminary FCP is submitted in connection with a planned development or special exception application in conjunction with a site design plan review application not requiring Planning Commission or Board of Appeals approval, the Department shall issue a final determination as to whether to approve a FCP.

C. A recommendation for approval by the Department regarding a preliminary FCP is not appealable until a final determination by the Planning Commission, the zoning Board of Appeals, or the Department, as the case may be.

F. The City shall make all review comments made by the Department, DNEP and their staff available online in the City's permit tracking software as soon as feasible.

## RETENTION

FCA MO Article VII Afforestation and Retention (nt. tree diameter)

### 7.2 Retention

Trees shrubs, plants, and specific areas are considered priority 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 plan cannot reasonably be altered: trees, shrubs and plants located in sensitive areas including the 100 year floodplain, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, nontidal wetlands, and critical habitats; and contiguous forest that connect the largest undeveloped or most vegetated tracts of land within an adjacent to the site.

#### 7.2-1 Retention

The following trees, shrubs, plants and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that the applicant

qualifies for a variance in accordance with this article: trees, shrubs, or plants determined to be rare, threatened, or endangered; trees that are part of an historic site, are associated with an historic structure, have been designated as a national, state, or county champion tree; any tree of 30 inches or greater diameter at 4.5 feet above the ground, or any tree with a diameter of 75% or more at 4.5 feet above the ground of the current State champion of that species.

O-32-14 17.13.045 Retention (nt. tree diameter)

A. ...Existing forest cover and individual trees shall be retained unless the applicant has demonstrated, to the satisfaction of the Department, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered.

B. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be retained, protected, and left in an undisturbed condition: Much the same as FCA MO with additional categories: priority forests as defined in the Forest Conservation Technical Manual; certain specimen trees greater than 24 inches in diameter at breast height; healthy forests.

C. This section establishes priority retention areas for developments that propose to clear below the break even point as determined on the Forest Conservation Worksheet in the Manual.

D. This section establishes criteria for justification of the removal of priority trees, as must be approved by the City Environmentalist.

O-32-14 A 21.71.080 Retention

A. The preliminary and final forest conservation plan shall give priority consideration to the retention of contiguous forest cover and minimize the need for reforestation and tree replacement. Healthy forest cover shall be retained unless reasonable efforts have been made to protect them and the plan cannot reasonably be altered.

B. Priority retention areas. Much the same at O-32-14.

C. Same as O-32-14.

D. Same as O-32-14

#### **TREE RELACEMENT AND AFFORESTATION (nt. threshold percentages)**

FCA MO No comparable section that addresses mitigation for removal of individual trees. Afforestation and reforestation are determined according to the Forest Conservation Worksheet in the Manual based upon canopy area and net tract area. (City Code Chapter 17.09, applicable on all properties of less than 40,000 square feet, has mitigation requirements for the removal of individual trees based upon their diameter.)

##### 7.1 Afforestation requirement.

1. A tract having less than 20% of the net tract area in forest cover shall be afforested up to at least 20% of the net tract area for:

agriculture and resource areas	20%
medium density residential areas	20%

2. A tract with less than 15% of its net tract area in forest cover shall be afforested up to at least 15% of the net tract area for:

institutional development areas	15%
high density residential areas	15%
mixed use and planned unit development areas	15%
commercial and industrial use areas	15%

3.1 Required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins;

3.2 Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level.

#### Article VIII Reforestation

##### 8.1 Forest Conservation Threshold

A. There is a forest conservation threshold established for all land use categories at which the reforestation requirement changes from a ration of ¼ acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold (Section B, below. These percentages are factored into the Forest Conservation Worksheet in the Manual).

B. 1. Agricultural and resource areas	50%;
2. Medium density residential areas	25%
3. Institutional development areas	20%
4. High density residential areas	20%
5. Mixed use and PUD areas	15%
6. Commercial and industrial use areas	15%

O-32-14 17.13.050 Tree Replacement, reforestation and afforestation (nt. threshold percentages)

B. Mitigation for the removal of Significant Trees: 12 – 18 inches DBH, 3 trees of at least 2.5 inch caliper (as measured 6 inches above the root ball); 18 – 23 inches DBH, 4 trees of at least 2.5 inch caliper; 24 inches DBH or greater, 8 trees.

1. A. Reforestation at ¼ of the forested area removed above the threshold (17.13.050(C));

1. B. Reforestation at 3 times the forested area removed below the threshold (17.13.050(C));

##### 1. C. Conservation and Afforestation Thresholds:

Agricultural and Resource Areas	60% Conservation	30% Afforestation
Medium Density Residential Areas	30% Conservation	25% Afforestation
Institutional and Development Areas	25% Conservation	20% Afforestation
High Density Residential Areas	25% Conservation	20% Afforestation
Mixed Use and PUD Areas	20% Conservation	15% Afforestation
Commercial and Industrial Areas	20% Conservation	15% Afforestation

O-32-14 A Same as O-32-14 but adds: Commercial PUD Areas 20% and 15%

## VARIANCES

### FCA MO Article XIV Variances

14.1 A. A person requesting a variance must demonstrate that enforcement would result in unwarranted hardship.

14.1 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;
6. Verify that the granting of a variance will not adversely affect water quality.

### O-32-14 17.13.090

Similar to FCA MO with additional requirements:

2. Demonstrate how the purpose of the variance is not based exclusively upon the desire to increase financial gain;
3. Describe how the variance is the minimum variance necessary to afford relief.

### O-32-14 A Similar to O-32-14 with exceptions:

21.71.140 B: The Department shall refer the application to DNEP for review and a recommendation of approval or disapproval. DNEP shall make findings on all factors set forth in section 21.71.170D and forward its finding to the Department.

21.71.140 D: The Department shall submit its recommendation for approval or disapproval of a variance to the Planning Commission or the Zoning Board of Appeals along with the application for a final determination...

21.71.140 E: If the variance is sought in conjunction with a site design plan application, not requiring Planning Commission or Zoning Board of Appeals approval the Department shall issue a final determination on the variance.

## APPEALS

### FCA MO Not included

### O-32-14 21.24.120 Modification of Approved Plans

B. 4. An appeal of the Planning and Zoning Director's decision with respect to any minor modification may be made to the Board of Appeals...

### 21.24.130 Appeals

Appeal of a Planning Commission decision (includes major modifications) is to the Circuit Court.

0-32-14 A

Same as 0-32-14.

### **GENERAL COMMENTS**

O-32-14 and O-32-14 Amended include Chapter 21.24 Planned Developments and 21.24.120 Modification of Approved Plans which clarify the Planning Commission's authority to review the substance of Forest Conservation Plans.

O-32-14 Amended differs notably from its precursor in that the appeal process is simplified, references to the City Environmentalist in the review process is removed, the public comment and hearing requirements are simplified, the no net loss provision is added, and all final decisions are removed from DNEP and placed in the Department of Planning and Zoning.