

**O-22-16 Forest Conservation Act  
Working Group Amendments  
July 17, 2016**

**Amendment 1:**

Definition of Tract

Page 17, Lines 37-38: Strike “, OR AN AREA OF LAND THAT IS 40,000 SQUARE FEET OR GREATER”

**Rationale:**

The language does not appear in the Model Act definition of Tract, but did appear in O-27-15 and the Planning Commission rewrite of O-32-14. The Working Group (Sponsors and City staff) chose to use the Model Act language. The new language was left in the ordinance through a drafting error.

*The following amendments were developed by the Ordinance’s sponsors and City staff in response to specific comments received from the Maryland Department of Natural Resources (DNR). DNR has accepted these proposed changes.*

**Amendment 2:**

Definition of Unwarranted Hardship

Page 18, Line 9 and Line 15: Strike the word “SPECIAL”

**Rationale:**

DNR Comment: “the definition would be made clearer without the use of “special” in zzz(1) as the variance is not referred elsewhere in the ordinance as special.

**Amendment 3:**

Page 31, Lines 5 through 7: Strike everything in the paragraph after “YEARS”.

*As amended:*

6. AN APPROVED FOREST CONSERVATION PLAN IS VALID FOR FIVE YEARS EXCEPT THE DEPARTMENT MAY REQUIRE SUBMISSION OF A REVISED FOREST CONSERVATION PLAN IF THERE IS A SIGNIFICANT CHANGE TO THE HEALTHY FOREST DURING THE PERIOD.

**Rationale:**

DNR Comment: “The City responded that the “language is attempting to account for significant changes that would render an FCP obsolete (ie hurricane or derecho that knocks down the forest, fire, pestilence, major landslide, etc)”. This language un-approves an approved forest conservation due to Acts of God, events beyond the applicants control. As the FCP is one component of the approval package for the proposed project, the action of un-approving the FCP would un-approve the subdivision / site plan, sediment control plan, etc for the project [NRA 5-1608]. This action would require any construction to halt onsite as the project no longer has the

required permits and approvals. The development of the amended FCP would require recalculating the worksheet, re-determine mitigation sites as wells as go through the public hearing process again. This leads to the question of whether the FCP would be required to be redesigned based on the worksheet, un-healthy forest, mitigation location and public comments. Lastly if the un-approval occurs after the lots are sold and owned by others, who is responsible to develop the new FCP?"

**Amendment 4:**

Revoking an approved Forest Conservation Plan

Page 36, Lines 6-7: Strike "THROUGH INACTION OF THE CITY CODE" and insert "DUE TO THE APPLICANT'S INACTION AS SPECIFIED IN TITLE 17 OF THE CITY CODE".

*As amended:*

iv. THE PROJECT PLAN APPROVAL IS TERMINATED ~~THROUGH INACTION OF THE CITY CODE~~ DUE TO THE APPLICANT'S INACTION AS SPECIFIED IN TITLE 17 OF THE CITY CODE.

Rationale:

DNR comment: "The wording "approval is terminated through inaction by operation of the city code" isn't clear, is cumbersome and doesn't reflect the response given by the city. According to the City response, permits issued expire if work doesn't take place within a rolling two years. Once the permits expire the developer needs to re-submit a complete application package to re-start the project. The proposed language is not transparent on its intent. It also appears that this language conflicts with Section 21.71.070(A)(6) as this section has a 2 year time frame and the mentioned section has 5 years."

**Amendment 5:**

Noncompliance Fees

Page 52, Line 9: Insert "MINIMUM" before "NONCOMPLIANCE

Page 52, Line 11: Delete remainder of sentence following "CONSERVATION" and append new sentence: "THE CITY COUNCIL MAY SET A GREATER NONCOMPLIANCE FEE BY RESOLUTION."

*As amended:*

1. A PERSON FOUND TO BE IN NONCOMPLIANCE WITH THIS CHAPTER, REGULATIONS ADOPTED UNDER THIS CHAPTER, THE FOREST CONSERVATION PLAN, OR THE ASSOCIATED FIVE YEAR MAINTENANCE AGREEMENT, SHALL PAY A MINIMUM NONCOMPLIANCE FEE OF TEN DOLLARS PER SQUARE FOOT OF THE AREA FOUND TO BE IN NONCOMPLIANCE WITH THE REQUIRED FOREST CONSERVATION OR AS SET BY RESOLUTION OF THE CITY COUNCIL, WHICHEVER IS GREATER. THE CITY COUNCIL MAY SET A GREATER NONCOMPLIANCE FEE BY RESOLUTION.

Rationale:

DNR Comment: "current proposed language is still not clear. It appears that A.1. is a "minimum of \$10" with A.2 setting the criteria on how to calculate a higher rate."

**Amendment 6:**

Definition of Healthy Forests – remove definitions and references.

Rationale: From DNR's letter of July 2, 2016, regarding "Healthy Forest": "Please remove the term and definition as it is not included in the Model Ordinance."

As amended:

p. 9, lines 17-24 (and corresponding subsequent re-lettering as needed):

~~G. "HEALTHY FORESTS" 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 NATURAL REGENERATION (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 DEPARTMENT SHALL SO DETERMINE.~~

p. 14, line 33:

~~F. AREAS OF HEALTHY FOREST.~~

p. 24, lines 33-41:

2. A REQUIREMENT THAT ENVIRONMENTAL FEATURES MAPS OR NATURAL RESOURCES INVENTORY SHALL INCLUDE TOPOGRAPHIC CONTOURS (AT TWO FOOT INTERVALS OR LESS IF REQUIRED BY THE DEPARTMENT), STEEP SLOPES AND THEIR BUFFERS, SOIL CLASSIFICATIONS (INCLUDING HYDRIC PROPERTIES), "HEALTHY FORESTS," SIGNIFICANT TREES, TREES MEASURING TWENTY FOUR INCHES OR GREATER DBH, STREAMS (INTERMITTENT, PERENNIAL, EPHEMERAL), STREAM BUFFERS, CRITICAL HABITATS, NATURAL DRAINAGE COURSES, AND WETLANDS AND THEIR BUFFERS.

p. 37, line 40 through p. 38, line 2:

i. 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 AND THEIR BUFFERS, NONTIDAL WETLANDS, AND CRITICAL HABITATS, ~~AND HEALTHY FORESTS~~