

Forest Conservation - No Net Loss Provision

Littmann Revised Proposed Amendments

AMENDMENT #1

Page 8, lines 8-9, remove strike out and retain language as follows: “the formula set forth below and in subsection (a)(3) of this section”

AMENDMENT #2

Page 8, line 14 through 27, remove strike-out and revise language as follows:

- “3. Calculations.
- i. For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of the forest removed shall be reforested at a ratio of ~~1/4~~1 acre planted for each acre removed.
 - ii. 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 (3)(i) of this subsection. The calculation of the credit shall be according to the criteria provided in the forest conservation technical manual.
 - iii. For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold.”

AMENDMENT #3

Page 8, line 12, in the Table under items (5) and (6), in column “Threshold Percentage” strike “15” and insert “20” percent.

AMENDMENT #4

Page 1, line 32, insert “21.71.080” before “21.71.090”

Page 7, line 35 insert Section 21.71.080 amended as follows:

“21.71.080 - Afforestation and retention.

A. Afforestation Requirement. A person submitting an application after the effective date of this chapter for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of forty thousand square feet or greater, shall:

1. Conduct afforestation on the lot or parcel in accordance with the following:
 - i. A tract having less than twenty percent of the net tract area in forest cover shall be afforested up to at least twenty percent of the net tract area for the following land use categories:
 - a. Agriculture and resource areas, and
 - b. Medium density residential areas;
 - ii. A tract with less than ~~fifteen~~TWENTY percent of its net tract area in forest cover shall be afforested up to at least ~~fifteen~~TWENTY percent of the net tract area for the following land use categories:
 - a. Institutional development areas,
 - b. High density residential areas,
 - c. Mixed use and planned unit development areas, and
 - d. Commercial and industrial use areas;
2. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Subsection A.1. of this section:
 - i. The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
 - ii. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a two to one ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

B. Retention.

1. 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 reasonable efforts have been made to protect them and the plan cannot reasonably be altered:
 - 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.
 - ii. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.
2. 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 Section 21.71.170 of this chapter:
 - i. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - a. The Federal Endangered Species Act of 1973 in 16 U.S.C. §§ 1531—1544 and in 50 C.F.R. 17,

- b. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2a-01—10-2a-09, Annotated Code of Maryland, and
- c. COMAR 08.03.08;
- ii. Trees that:
 - a. Are part of a site designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis,
 - b. Are associated with a structure designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis, or
 - c. Have been designated by the State, County, or the Department as a National, State, County or Municipality champion tree; and
- iii. Any tree:
 - a. Having a DBH of thirty inches or more, or
 - b. Which has been designated as a significant tree pursuant to this chapter.”

AMENDMENT #5

Page 1, line 33, insert “21.71.100”

Page 8, line 29 insert Section 21.71.100 amended as follows:

“21.71.100 - Priorities and time requirements for afforestation and reforestation.

A. Sequence for Afforestation and Reforestation.

1. After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Department, is as follows:
 - i. Forest creation in accordance with a forest conservation plan using one or more of the following:
 - a. Transplanted or nursery stock,
 - b. Whip or seedling stock, or
 - c. Natural regeneration where it can be adequately shown to meet the objective of the Forest Conservation Technical Manual;
 - ii. In a municipal corporation with a tree management plan and in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department, the use of:
 - a. Street trees as a permissible step in the priority sequence for afforestation or reforestation and with a mature canopy coverage may be granted full credit as a mitigation technique, and
 - b. Acquisition of an offsite protection easement on existing forested areas WITHIN THE CITY BOUNDARIES not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed fifty percent of the area of forest cover protected;

- iii. When all other options, both onsite and offsite, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least thirty-five feet wide and covering at least two thousand five hundred square feet of area.
2. A sequence other than the one described in Subsection A.1. of this article may be used for a specific project, if necessary, to achieve the objectives of the City Land Use Plan or City Land Use Policies, or to take advantage of opportunities to consolidate forest conservation efforts.
3. The following are considered a priority for afforestation and reforestation:
 - i. Those techniques that enhance existing forest by selective clearing or supplemental planting onsite;
 - ii. Onsite afforestation and reforestation where the retention options have been exhausted, using methods selected in accordance with Subsection A.6. of this section, and the location being selected in accordance with this subsection.
 - iii. Offsite afforestation or reforestation in the same watershed WITHIN THE CITY BOUNDARIES or in accordance with an approved master plan where the applicant has demonstrated that no reasonable alternative onsite exists, or where:
 - a. Any onsite priority areas for afforestation or reforestation have been planted in accordance with this subsection; and
 - b. The applicant has justified to the Department's satisfaction that environmental benefits associated with offsite afforestation or reforestation exceed those derived from onsite planting.
4. In the cases cited in Subsection A.3. of this section, the method shall be selected in accordance with Subsection A.6. of this section and the location shall be selected in accordance with Subsection A.3. of this section.
5. Offsite afforestation or reforestation may include the use of forest mitigation banks WITHIN THE CITY BOUNDARIES which have been so designated in advance by the Department.
6. Standards for meeting afforestation or reforestation requirements shall be established using one or more of the following methods:
 - i. Establish or enhance forest buffers adjacent to intermittent and perennial streams, and coastal bays and their buffers, to widths of at least fifty to one hundred feet to prevent activity causing a detrimental effect to the waterway as determined by the director;
 - ii. Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and, where practical, forested corridors should be a minimum of three hundred feet in width to facilitate wildlife movement;
 - iii. Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - iv. Establish or enhance forested areas in the 100-year floodplains;
 - v. Establish plantings to stabilize slopes of twenty-five percent or greater and slopes of fifteen percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
 - vi. Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;

- vii. Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
 - viii. Use native plant materials for afforestation or reforestation, when appropriate.
7. A person required to conduct afforestation or reforestation under this chapter shall accomplish it within one year or two growing seasons, whichever is a greater time period, following development project completion.”

Rationale – this language mimics the City of Frederick restriction on preserving existing tracts of forest, specifying that such protections must be done on existing forest that is WITHIN the City.