



## Legislation Details (With Text)

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**File created:** 5/19/2015      **In control:** Finance Committee

**On agenda:** 4/11/2016      **Final action:** 5/9/2016

**Title:** City of Annapolis Forest Conservation Act - For the purpose of prohibiting certain development projects from cutting or clearing certain forests within the City of Annapolis (the "City") unless a forest stand delineation and a forest conservation plan associated with such projects are in effect.

**Sponsors:** Sheila Finlayson

**Indexes:** Economic Matters Committee, Environmental Matters Committee, Finance Committee, Planning Commission, Rules and City Government Committee

**Code sections:**

**Attachments:** 1. O-27-15.pdf

Date	Ver.	Action By	Action	Result
4/11/2016	1	City Council	postpone	Pass
2/8/2016	1	City Council	postpone	Pass
5/21/2015	1	City Council	adopt on first reader	Pass
5/21/2015	1	City Council	refer	
5/21/2015	1	City Council	refer	
5/21/2015	1	City Council	refer	
5/21/2015	1	City Council	refer	
5/21/2015	1	City Council	refer	

**City of Annapolis Forest Conservation Act** - For the purpose of prohibiting certain development projects from cutting or clearing certain forests within the City of Annapolis (the "City") unless a forest stand delineation and a forest conservation plan associated with such projects are in effect.

### **CITY COUNCIL OF THE City of Annapolis**

#### **Ordinance 27-15**

**Sponsor: Alderwoman Finlayson**

**Referred to**  
**Planning Commission**  
**Economic Matters Committee**  
**Environmental Matters Committee**  
**Rules and City Government Committee**  
**Finance Committee**

**AN ORDINANCE concerning**

## City of Annapolis Forest Conservation Act

**FOR** the purpose of prohibiting certain development projects from cutting or clearing certain forests within the City of Annapolis (the “City”) unless a forest stand delineation and a forest conservation plan associated with such projects are in effect.

**BY** amending the following portions of the Code of the City of Annapolis, 2013 Edition:

Section 17.09.025

**BY** adding the following portions to the Code of the City of Annapolis, 2013 Edition:

Chapter 21.71

Section 21.71.010

Section 21.71.020

Section 21.71.030

Section 21.71.040

Section 21.71.050

Section 21.71.060

Section 21.71.070

Section 21.71.080

Section 21.71.090

Section 21.71.100

Section 21.71.110

Section 21.71.120

Section 21.71.130

Section 21.71.140

Section 21.71.150

Section 21.71.160

Section 21.71.170

Section 21.71.180

Section 21.71.190

Section 21.71.200

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

### **Chapter 17.09 - TREES IN DEVELOPMENT AREAS**

#### **Section 17.09.025 - Applicability.**

- A. The requirements of this chapter shall apply for any application for a building and grading permit, or any application for a development project requiring site design plan review in accordance with the requirements of Chapter 21.22.
- B. ~~The Maryland Forest Conservation Act, Annotated Code of Maryland, Natural Resources Article, Title 5, Subtitle 16 (or its successors) shall apply to any public or private subdivision plan, or application for a grading permit, or any application for a development project requiring site design review, on areas forty thousand square feet or greater, Except as provided in Annotated Code of Maryland, Natural~~

Resources Article, Section 5-1602(b) (or its successors), CHAPTER 21.71 OF THE CITY CODE SHALL APPLY TO ANY PUBLIC OR PRIVATE SUBDIVISION PLAN, OR APPLICATION FOR A GRADING PERMIT, OR ANY APPLICATION FOR A DEVELOPMENT PROJECT REQUIRING SITE DESIGN REVIEW, ON AREAS 40,000 SQUARE FEET OF GREATER. Where any provision of the Forest Conservation Act and a provision of the City Code both apply, the more restrictive requirements may be employed.

## **CHAPTER 21.71 - FOREST CONSERVATION**

### **SECTION 21.71.010 - PURPOSE AND GENERAL PROVISIONS**

THE CITY COUNCIL HAS DETERMINED THAT TO MEET THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §§5-1601---5-1612, ANNOTATED CODE OF MARYLAND, THE PROVISIONS OF THIS ORDINANCE MUST BE ENACTED TO PROTECT FORESTS AND ENVIRONMENTALLY SENSITIVE AREAS IN THE CITY.

### **SECTION 21.71.020 - FOREST AND TREE CONSERVATION DEFINITIONS.**

FOR THE PURPOSES OF THIS CHAPTER, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. “AFFORESTATION” MEANS:

1. ESTABLISHMENT OF A FOREST ON AN AREA FROM WHICH FOREST COVER HAS BEEN ABSENT FOR A LONG PERIOD OF TIME; OR
2. PLANTING OF OPEN AREAS WHICH ARE NOT PRESENTLY IN FOREST COVER.

B. “APPLICANT” MEANS A PERSON WHO HAS SUBMITTED AN APPLICATION FOR APPROVAL OF A PLANNED DEVELOPMENT SPECIAL EXCEPTION, SUBDIVISION SITE DESIGN PLAN, OR PROJECT PLAN, OR A GRADING OR SEDIMENT CONTROL PERMIT, OR WHO HAS SUBMITTED A FOREST STAND DELINEATION FOR REVIEW, A PRELIMINARY FOREST CONSERVATION PLAN FOR REVIEW, OR A FINAL FOREST CONSERVATION PLAN FOR APPROVAL FOR A TRACT OF LAND THAT, IN ITS EXISTING OR REDEVELOPED STATE, IS 40,000 SQUARE FEET OR GREATER.

C. “APPROVED FOREST MANAGEMENT PLAN” MEANS A DOCUMENT:

1. APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES FORESTER ASSIGNED TO THE CITY; AND
2. WHICH OPERATES AS A PROTECTIVE AGREEMENT FOR FOREST CONSERVATION AS DESCRIBED IN THE NATURAL RESOURCES ARTICLE, §§5-1607(E)-(F), ANNOTATED CODE OF MARYLAND.

D. “CALIPER” MEANS THE DIAMETER MEASURED AS TWO INCHES ABOVE THE ROOT COLLAR.

E. “CHAMPION TREE” MEANS THE LARGEST TREE OF ITS SPECIES WITHIN THE UNITED

STATES, THE STATE, COUNTY, OR THE CITY, AS APPLICABLE;

F. “COMAR” MEANS THE MARYLAND CODE OF REGULATIONS.

G. “COMMERCIAL AND INDUSTRIAL USES” MEANS MANUFACTURING OPERATIONS, OFFICE COMPLEXES, SHOPPING CENTERS, AND OTHER SIMILAR USES AND THEIR ASSOCIATED STORAGE AREAS, YARDING AND PARKING AREAS, MORE SPECIFICALLY DESCRIBED AND DELINEATED IN CITY CODE SECTION 21.48.020, TABLES OF USES.

H. “COMMERCIAL LOGGING OR TIMBER HARVESTING OPERATIONS” MEANS THE CUTTING AND REMOVING OF TREE STEMS FROM A SITE FOR COMMERCIAL PURPOSES, LEAVING THE ROOT MASS INTACT.

I. “CRITICAL HABITAT AREA” MEANS A CRITICAL HABITAT FOR AN ENDANGERED SPECIES AND ITS SURROUNDING PROTECTION AREA. A CRITICAL HABITAT AREA SHALL:

1. BE LIKELY TO CONTRIBUTE TO THE LONG-TERM SURVIVAL OF THE SPECIES;
2. BE LIKELY TO BE OCCUPIED BY THE SPECIES FOR THE FORESEEABLE FUTURE;  
AND
3. CONSTITUTE HABITAT OF THE SPECIES WHICH IS CONSIDERED CRITICAL UNDER NATURAL RESOURCES ARTICLE, §§4-2A-04 AND 10-2A-06, ANNOTATED CODE OF MARYLAND.

J. “CRITICAL HABITAT FOR ENDANGERED SPECIES” MEANS A HABITAT OCCUPIED AN ENDANGERED SPECIES AS DETERMINED OR LISTED UNDER NATURAL RESOURCES ARTICLE, §§4-2A-04 AND 10-2A-04, ANNOTATED CODE OF MARYLAND.

K. “DECLARATION OF INTENT” MEANS:

1. A SIGNED AND NOTARIZED STATEMENT BY A LANDOWNER OR THE LANDOWNER’S AGENT CERTIFYING THAT THE ACTIVITY ON THE LANDOWNER’S PROPERTY:
  - i. IS FOR CERTAIN ACTIVITIES EXEMPTED UNDER THIS CHAPTER OR NATURAL RESOURCES ARTICLE, §§5-103 AND 5-1601---5-1612, ANNOTATED CODE OF MARYLAND,
  - ii. DOES NOT CIRCUMVENT THE REQUIREMENTS OF THIS CHAPTER OR NATURAL RESOURCES ARTICLE, §§5-103 AND 5-1601-5-1612, ANNOTATED CODE OF MARYLAND, AND
  - iii. DOES NOT CONFLICT WITH THE PURPOSES OF ANY OTHER DECLARATION OF INTENT; OR
2. THE DOCUMENT REQUIRED UNDER COMAR 08.19.01.05 OR THIS CHAPTER.

L. “DEPARTMENT” MEANS THE CITY DEPARTMENT OF PLANNING AND ZONING.

M. DEVELOPMENT PROJECT.

1. “DEVELOPMENT PROJECT” MEANS THE GRADING OR CONSTRUCTION ACTIVITIES OCCURRING ON A SPECIFIC TRACT THAT IS 40,000 SQUARE FEET OR GREATER.
2. “DEVELOPMENT PROJECT” INCLUDES REDEVELOPMENT.

N. “DEVELOPMENT PROJECT COMPLETION” MEANS FOR THE PURPOSES OF AFFORESTATION, REFORESTATION, OR PAYMENT INTO A FUND:

1. THE RELEASE OF THE DEVELOPMENT BOND, IF REQUIRED;
2. ACCEPTANCE OF THE PROJECT’S STREETS, UTILITIES, AND PUBLIC SERVICES BY THE DEPARTMENT; OR
3. DESIGNATION BY THE DEPARTMENT OR STATE THAT A:
  - i. DEVELOPMENT PROJECT HAS BEEN COMPLETED, OR
  - ii. PARTICULAR STAGE OF A STAGED DEVELOPMENT PROJECT, INCLUDING A PLANNED UNIT DEVELOPMENT, HAS BEEN COMPLETED.

O. “DNEP” MEANS THE CITY DEPARTMENT OF NEIGHBORHOOD AND ENVIRONMENTAL PROGRAMS.

P. FOREST.

1. “FOREST” MEANS A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND OTHER WOODY PLANTS COVERING A LAND AREA OF 10,000 SQUARE FEET OR GREATER.
2. “FOREST” INCLUDES:
  - i. AREAS THAT HAVE AT LEAST 100 LIVE TREES PER ACRE WITH AT LEAST 50 PERCENT OF THOSE TREES HAVING A TWO INCH OR GREATER DIAMETER AT 4.5 FEET ABOVE THE GROUND AND LARGER; AND
  - ii. AREAS THAT HAVE BEEN CUT BUT NOT CLEARED.
3. “FOREST” DOES NOT INCLUDE ORCHARDS.

Q. “FOREST CONSERVATION” MEANS THE RETENTION OF EXISTING FOREST OR THE CREATION OF NEW FOREST AT THE LEVELS SET BY THE STATE OR THE DEPARTMENT.

R. “FOREST CONSERVATION AND MANAGEMENT AGREEMENT” MEANS AN AGREEMENT AS STATED IN TAX-PROPERTY ARTICLE, §8-211, ANNOTATED CODE OF MARYLAND.

S. “FOREST CONSERVATION TECHNICAL MANUAL” MEANS THE CITY OF ANNAPOLIS FOREST CONSERVATION TECHNICAL MANUAL, USED TO ESTABLISH STANDARDS OF

PERFORMANCE REQUIRED IN PREPARING FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.

- T. “FOREST CONSERVATION PLAN” MEANS A PLAN APPROVED PURSUANT TO NATURAL RESOURCES ARTICLE, §§5-1606 AND 5-1607, ANNOTATED CODE OF MARYLAND AND THIS CHAPTER.
- U. “FOREST COVER” MEANS THE AREA OF A SITE MEETING THE DEFINITION OF FOREST.
- V. “FOREST MANAGEMENT PLAN” MEANS A PLAN ESTABLISHING BEST CONSERVATION AND MANAGEMENT PRACTICES FOR A LANDOWNER IN ASSESSMENT OF THE RESOURCE VALUES OF FORESTED PROPERTY.
- W. “FOREST MITIGATION BANK” MEANS AN AREA OF LAND WHICH HAS BEEN INTENTIONALLY AFFORESTED OR REFORESTED FOR THE EXPRESS PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS.
- X. “FOREST MITIGATION BANK AGREEMENT” MEANS AN AGREEMENT ENTERED INTO BY AN INDIVIDUAL OWNING A FOREST MITIGATION BANK AND THE DEPARTMENT OR LOCAL GOVERNMENT WHICH COMMITS THE BANKER TO CERTAIN PROCEDURES AND REQUIREMENTS WHEN CREATING AND OPERATING THE FOREST MITIGATION BANK.
- Y. “FOREST MITIGATION BANK PLAN” MEANS A PLAN SUBMITTED FOR APPROVAL OF A FOREST MITIGATION BANK TO THE DEPARTMENT, OR A LOCAL GOVERNMENT WITH AN APPROVED LOCAL PROGRAM, BY AN INDIVIDUAL PROPOSING TO ESTABLISH A FOREST MITIGATION BANK.
- Z. “FOREST STAND DELINEATION” MEANS THE METHODOLOGY FOR EVALUATING THE EXISTING VEGETATION ON A SITE PROPOSED FOR DEVELOPMENT, AS PROVIDED IN THE FOREST CONSERVATION TECHNICAL MANUAL.
- AA. “GROWING SEASON” MEANS THE PERIOD OF CONSECUTIVE FROST-FREE DAYS AS STATED IN THE CURRENT SOIL SURVEY FOR THIS COUNTRY PUBLISHED BY THE NATIONAL COOPERATIVE SOIL SURVEY PROGRAM, 16 U.S.C. §590(A)-(F).
- BB. “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 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 DEPARTMENT SHALL SO DETERMINE.
- CC. “HIGH DENSITY RESIDENTIAL AREAS” MEANS AREAS ZONED FOR DENSITIES GREATER THAN ONE DWELLING UNIT PER ACRE, INCLUDING BOTH EXISTING AND PLANNED DEVELOPMENT AND THEIR ASSOCIATED INFRASTRUCTURE, SUCH AS ROADS, UTILITIES, AND WATER AND SEWER SERVICE.
- DD. “INSTITUTIONAL DEVELOPMENT AREA” MEANS AREAS ZONED TO ALLOW THE

INCLUSION OF SCHOOLS, COLLEGES AND UNIVERSITIES, MILITARY INSTALLATIONS, TRANSPORTATION FACILITIES, UTILITY AND SEWER PROJECTS, GOVERNMENT OFFICES AND FACILITIES, GOLF COURSES, RECREATION AREAS, PARKS, AND CEMETERIES.

EE. "INTERMITTENT STREAM" MEANS 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 OR AS DEFINED IN COMAR 26.23.01.01 AND CONFIRMED BY FIELD VERIFICATION.

FF. "LANDSCAPING PLAN" MEANS A PLAN:

1. DRAWN TO SCALE, SHOWING DIMENSIONS AND DETAILS FOR REFORESTING AN AREA AT LEAST 35 FEET WIDE AND COVERING 2,500 SQUARE FEET OR GREATER IN SIZE;
2. USING NATIVE OR INDIGENOUS PLANTS WHEN APPROPRIATE; AND
3. WHICH IS MADE PART OF AN APPROVED FOREST CONSERVATION PLAN.

GG. "LINEAR PROJECT" MEANS A PROJECT WHICH:

1. IS ELONGATED WITH NEARLY PARALLEL SIDES;
2. IS USED TO TRANSPORT A UTILITY PRODUCT OR PUBLIC SERVICE NOT OTHERWISE CONTAINED IN AN APPLICATION FOR SUBDIVISION, SUCH AS ELECTRICITY, GAS, WATER, SEWER, COMMUNICATIONS, TRAINS, AND VEHICLES; AND
3. MAY TRAVERSE FEE SIMPLE PROPERTIES THROUGH DEFINED BOUNDARIES, OR ESTABLISHED EASEMENT RIGHTS.

HH. "LOCAL AGENCY" MEANS EACH UNIT IN THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF A COUNTY OR MUNICIPAL GOVERNMENT, INCLUDING AN OFFICE OR DEPARTMENT.

II. "LOT" MEANS A UNIT OF LAND, THE BOUNDARIES OF WHICH HAVE BEEN ESTABLISHED BY SUBDIVISION OF A LARGER PARCEL, AND WHICH WILL NOT BE THE SUBJECT OF FURTHER SUBDIVISION, AS DEFINED BY NATURAL RESOURCES ARTICLE, §5-1601, ANNOTATED CODE OF MARYLAND AND THIS CHAPTER, WITHOUT AN APPROVED FOREST STAND DELINEATION AND FOREST CONSERVATION PLAN.

JJ. "MAINTENANCE AGREEMENT" MEANS THE SHORT-TERM MANAGEMENT AGREEMENT ASSOCIATED WITH AFFORESTATION OR REFORESTATION PLANS REQUIRED UNDER NATURAL RESOURCES ARTICLE §5-1605, ANNOTATED CODE OF MARYLAND AND THIS CHAPTER.

KK. "MEDIUM DENSITY RESIDENTIAL AREAS" MEANS 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.

LL. “MINOR DEVELOPMENT PROJECT” MEANS A PROJECT:

1. ON LESS THAN 5 ACRES OF LAND CONTAINING NOT MORE THAN FOUR LOTS PER ACRE; OR
2. SUBSTANTIVELY SIMILAR AS DEFINED BY THE DEPARTMENT AND APPROVED BY THE STATE.

MM. “MIXED USE DEVELOPMENT” MEANS A SINGLE, HIGH DENSITY DEVELOPMENT PROJECT WHICH INCLUDES TWO OR MORE TYPES OF USES, MORE SPECIFICALLY DESCRIBED AND DELINEATED IN CITY CODE SECTION 21.48.030, TABLES OF USES.

NN. “NATURAL REGENERATION” MEANS THE NATURAL ESTABLISHMENT OF TREES AND OTHER VEGETATION WITH AT LEAST 400 WOODY, FREE-TO-GROW SEEDLINGS PER ACRE, WHICH ARE CAPABLE OF REACHING A HEIGHT OF AT LEAST 20 FEET AT MATURITY.

OO. “NET TRACT AREAS” MEANS:

1. 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;
2. 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
3. FOR A LINEAR PROJECT:
  - i. THE AREA OF A RIGHT-OF-WAY WIDTH, NEW ACCESS ROADS, AND STORAGE; OR
  - ii. THE LIMITS OF DISTURBANCE AS SHOWN ON AN APPLICATION FOR SEDIMENT AND EROSION CONTROL APPROVAL OR IN A CAPITAL IMPROVEMENTS PROGRAM PROJECT DESCRIPTION.

PP. NONTIDAL WETLANDS.

1. “NONTIDAL WETLANDS” MEANS AN AREA THAT IS:

- i. 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

- ii. CONSIDERED A NONTIDAL WETLAND IN ACCORDANCE WITH THE PUBLICATION KNOWN AS THE “FEDERAL MANUAL FOR IDENTIFYING AND DELINEATING JURISDICTIONAL WETLAND,” PUBLISHED IN 1989 AND AS MAY BE AMENDED AND INTERPRETED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

- 2. “NONTIDAL WETLANDS” DOES NOT INCLUDE TIDAL WETLANDS REGULATED UNDER NATURAL RESOURCES ARTICLE, TITLE 9, ANNOTATED CODE OF MARYLAND.

QQ. “OFFSITE” MEANS OUTSIDE OF THE LIMITS OF THE AREA ENCOMPASSED BY THE TRACT.

RR. “ONSITE” MEANS WITHIN THE LIMITS OF THE AREA ENCOMPASSED BY THE TRACT, INCLUDING AN AREA CLASSIFIED AS A 100-YEAR FLOODPLAIN.

SS. “100-YEAR FLOOD” MEANS A FLOOD WHICH HAS ONE 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.

TT. “100-YEAR FLOODPLAIN” MEANS AN AREA ALONG OR ADJACENT TO A STREAM OF 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.

UU. “PERENNIAL STREAM” MEANS 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, OR AS DEFINED IN COMAR 26.23.01.01 AND CONFIRMED BY FIELD VERIFICATION.

VV. “PERSON” MEANS THE FEDERAL GOVERNMENT, THE STATE, A COUNTY, 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.

WW. “PLANNED UNIT DEVELOPMENT” OR “PLANNED DEVELOPMENT” MEANS A DEVELOPMENT COMPRISED OF A COMBINATION OF LAND USES OR VARYING INTENSITIES OF THE SAME LAND USE IN ACCORDANCE WITH AN INTEGRATED PLAN THAT PROVIDES FLEXIBILITY IN LAND USE DESIGN APPROVED BY THE CITY WITH AT LEAST TWENTY PERCENT OF THE LAND PERMANENTLY DEDICATED TO OPEN SPACE IN RESIDENTIAL PLANNED DEVELOPMENTS AND AT LEAST FIVE PERCENT OF THE LAND

PERMANENTLY DEDICATED TO OPEN SPACE IN COMMERCIAL, MIXED USE AND OTHER PLANNED DEVELOPMENTS.

XX. “PROJECT PLAN” MEANS A CONSTRUCTION, GRADING, OR SEDIMENT CONTROL ACTIVITY ON AN AREA OF 40,000 SQUARE FEET OR GREATER BY A LOCAL AGENCY OR A “SITE DESIGN PLAN” AS SPECIFIED IN CITY CODE SECTION 21.22.020.

YY. “PUBLIC UTILITY” MEANS ANY:

1. TRANSMISSION LINE OR ELECTRIC GENERATING STATION; OR
2. WATER, SEWER, ELECTRIC, GAS, TELEPHONE, OR TELEVISION CABLE SERVICE LINE.

ZZ. “REFORESTATION” OR “REFORESTED” MEANS THE:

1. 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 TWO INCH OR GREATER DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND, WITHIN SEVEN YEARS; OR
2. ESTABLISHMENT OF A FOREST ACCORDING TO PROCEDURES SET FORTH IN THE FOREST CONSERVATION TECHNICAL MANUAL.
3. LANDSCAPING OF AREAS UNDER AN APPROVED LANDSCAPING PLAN ESTABLISHING A FOREST AT LEAST 35 FEET WIDE AND COVERING 2,500 SQUARE FEET OR MORE OF AREA.
4. 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.

AAA. “REGULATED ACTIVITY” MEANS ANY OF THE FOLLOWING ACTIVITIES, WHEN THAT ACTIVITY OCCURS ON A UNIT OF LAND WHICH IS 40,000 SQUARE FEET OR GREATER:

1. SUBDIVISION;
2. GRADING;
3. AN ACTIVITY THAT REQUIRES A SEDIMENT CONTROL PERMIT;
4. PROJECT PLAN; OR
5. A PLANNED DEVELOPMENT

BBB. “RETENTION” MEANS THE DELIBERATE HOLDING AND PROTECTION OF

EXISTING TREES, SHRUBS, OR PLANTS ON THE SITE ACCORDING TO ESTABLISHED STANDARDS AS PROVIDED IN THE FOREST CONSERVATION TECHNICAL MANUAL.

CCC. “SEDIMENT CONTROL PLAN” MEANS THE AUTHORIZATION OF AN ACTIVITY REGULATED UNDER A SEDIMENT CONTROL PLAN AS PROVIDED IN.

DDD. “SEEDLING” MEANS AN UNBRANCHED WOODY PLANT, LESS THAN 24 INCHES IN HEIGHT AND HAVING A DIAMETER OF LESS THAN ½ INCH MEASURED AS 2 INCHES ABOVE THE ROOT COLLAR.

EEE. “SELECTIVE CLEARING” MEANS THE CAREFUL AND PLANNED REMOVAL OF TREES, SHRUBS, AND PLANTS USING SPECIFIC STANDARDS AND PROTECTION MEASURES UNDER AN APPROVED FOREST CONSERVATION PLAN.

FFF. “STEEP SLOPE” MEANS A SLOPE OF 15% OR GREATER.

GGG. “STREAM BUFFER” MEANS ALL LANDS LYING WITHIN 50 FEET, MEASURED FROM THE TOP OF EACH NORMAL BANK OF A PERENNIAL OR INTERMITTENT STREAM.

HHH. “SUBDIVISION” MEANS A DIVISION OF A UNIT OF LAND INTO TWO OR MORE LOTS OF PARCELS FOR THE PURPOSE, WHETHER IMMEDIATE OR FUTURE, OF TRANSFER OF OWNERSHIP, SALE, LEASE, OR DEVELOPMENT.

### III. “STREAM RESTORATION”

JJJ. “TRACT” MEANS PROPERTY OR UNIT OF LAND SUBJECT TO AN APPLICATION FOR A GRADING OR SEDIMENT CONTROL PERMIT, SUBDIVISION APPROVAL, PROJECT PLAN APPROVAL, OR AN AREA OF LAND THAT IS 40,000 SQUARE FEET OR GREATER.

KKK. “TRACT FOR A PLANNED UNIT DEVELOPMENT” MEANS THE ENTIRE PROPERTY SUBJECT TO A PLANNED UNIT DEVELOPMENT.”

LLL. “TREE” MEANS 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.

MMM. VARIANCE.

1. “VARIANCE” MEANS AN EXEMPTION GRANTED TO A PERSON WITH THE OWNERSHIP INTEREST IN A TRACT FROM ONE OR MORE REQUIREMENTS OF THIS CHAPTER.
2. “VARIANCE” DOES NOT MEAN A ZONING VARIANCE.

NNN. “WATERSHED” MEANS ALL LAND LYING WITHIN AN AREA DESCRIBED AS A SUB-BASIN IN WATER QUALITY REGULATIONS ADOPTED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT UNDER COMAR 26.08.02.08.

OOO. “WHIP” MEANS AN UNBRANCHED WOODY PLANT GREATER THAN 24 INCHES IN

HEIGHT AND HAVING A DIAMETER OF LESS THAN ONE INCH MEASURED AT TWO INCHES ABOVE THE ROOT COLLAR.

**SECTION 21.71.030 - APPLICATION.**

**A. THIS CHAPTER IS APPLICABLE TO:**

1. A PERSON MAKING APPLICATIONS FOR A SUBDIVISION, PROJECT PLAN, GRADING, SEDIMENT CONTROL, PLANNED DEVELOPMENT, SPECIAL EXCEPTION OR SITE PLAN APPROVAL ON UNITS OF LAND 40,000 SQUARE FEET OR GREATER.
2. A PUBLIC UTILITY NOT EXEMPT UNDER SUBSECTION (B)(5) AND (6) OF THIS SECTION;
3. A UNIT OF COUNTY OR MUNICIPAL GOVERNMENT, INCLUDING PUBLIC UTILITY OR PUBLIC WORKS PROJECT, MAKING APPLICATION FOR A SUBDIVISION, PROJECT PLAN, GRADING, OR SEDIMENT CONTROL APPROVAL ON AREAS 40,000 SQUARE FEET OR GREATER.

**B. THIS CHAPTER DOES NOT APPLY TO:**

1. HIGHWAY CONSTRUCTION ACTIVITIES UNDER NATURAL RESOURCES ARTICLE, §5-103, ANNOTATED CODE OF MARYLAND;
2. AREAS GOVERNED BY THE CHESAPEAKE BAY CRITICAL AREA PROTECTION LAW, NATURAL RESOURCES ARTICLE, §§8-1801---8-1817, ANNOTATED CODE OF MARYLAND, INCLUDING THOSE AREAS INTO WHICH CRITICAL AREA FOREST PROTECTION MEASURES HAVE BEEN EXTENDED UNDER NATURAL RESOURCES ARTICLE, §5-1602(C), ANNOTATED CODE OF MARYLAND;
3. AGRICULTURAL ACTIVITIES NOT RESULTING IN A CHANGE IN LAND USE CATEGORY, INCLUDING AGRICULTURAL SUPPORT BUILDING AND OTHER RELATED STRUCTURES BUILT USING ACCEPTED BEST MANAGEMENT PRACTICES, EXCEPT THAT A PERSON ENGAGING IN AN AGRICULTURAL ACTIVITY CLEARING 40,000 SQUARE FEET OR GREATER OF FOREST WITHIN A ONE YEAR PERIOD, MAY NOT RECEIVE AN AGRICULTURAL EXEMPTION, UNLESS THE PERSON FILES A DECLARATION OF INTENT AS PROVIDED FOR IN SUBSECTION(C) OF THIS SECTION WHICH INCLUDES:
  - i. A STATEMENT THAT THE LANDOWNER OR LANDOWNER'S AGENT WILL PRACTICE AGRICULTURE ON THAT PORTION OF THE PROPERTY FOR FIVE YEARS FROM THE DATE OF THE DECLARATION; AND
  - ii. A SKETCH OF THE PROPERTY WHICH SHOWS THE AREAS TO BE CLEARED;
4. THE CUTTING OR CLEARING OF PUBLIC UTILITY RIGHTS-OF-WAY LICENSED UNDER PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND, OR LAND FOR ELECTRIC GENERATING STATIONS

LICENSED UNDER PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND, IF:

- i. REQUIRED CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY HAVE BEEN ISSUED IN ACCORDANCE WITH NATURAL RESOURCES ARTICLE, §5-1603(F), ANNOTATED CODE OF MARYLAND; AND
  - ii. CUTTING OR CLEARING OF THE FOREST IS CONDUCTED TO MINIMIZE THE LOSS OF FOREST;
5. 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;
6. EXCEPT FOR A PUBLIC UTILITY SUBJECT TO SUBSECTION (B)(5) OF THIS SECTION, ROUTINE MAINTENANCE OR EMERGENCY REPAIRS OF A PUBLIC UTILITY RIGHT-OF-WAY IF:
  - i. THE RIGHT-OF-WAY EXISTED BEFORE THE EFFECTIVE DATE OF THIS SECTION; OR
  - ii. THE RIGHT-OF-WAY'S INITIAL CONSTRUCTION WAS APPROVED BEFORE THE EFFECTIVE DATE OF THIS SECTION.
7. A RESIDENTIAL CONSTRUCTION ACTIVITY CONDUCTED ON AN EXISTING SINGLE LOT OF A SIZE OF RECORD AT THE TIME OF APPLICATION, OR A LINEAR PROJECT NOT OTHERWISE EXEMPTED UNDER THIS SECTION, IF THE ACTIVITY:
  - i. DOES NOT RESULT IN THE CUMULATIVE CUTTING, CLEARING, OR GRADING OF MORE THAN 20,000 SQUARE FEET OF FOREST;
  - ii. 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 SECTION; AND
  - iii. IS THE SUBJECT OF A DECLARATION OF INTENT FILED WITH THE DEPARTMENT, AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, STATING THAT THE LOT WILL NOT BE THE SUBJECT OF A REGULATED ACTIVITY WITHIN FIVE YEARS OF THE CUTTING, CLEARING, OR GRADING OF FOREST;
8. AN ACTIVITY REQUIRED FOR THE PURPOSE OF CONSTRUCTING A DWELLING HOUSE INTENDED FOR THE USE OF THE OWNER, OR A CHILD OF THE OWNER, IF THE ACTIVITY:
  - i. DOES NOT RESULT IN CUTTING, CLEARING, OR GRADING OF MORE THAN 20,000 SQUARE FEET OF FOREST; AND
  - ii. IS THE SUBJECT OF A DECLARATION OF INTENT FILED WITH THE

DEPARTMENT, AS PROVIDED FOR IN SUBSECTION (C) OF THIS SECTION, WHICH STATES THAT A TRANSFER OF OWNERSHIP MAY RESULT IN A LOSS OF EXEMPTION.

9. A PRELIMINARY PLAN OF SUBDIVISION OR A GRADING OR SEDIMENT CONTROL PLAN APPROVED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER;
10. A PLANNED UNIT DEVELOPMENT, PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER, HAS:
  - i. MET ALL REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT APPROVAL; AND
  - ii. OBTAINED DEVELOPMENT PLAN APPROVAL FROM THE DEPARTMENT;
11. 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 OF PARCEL, IF:
  - i. THE TRANSFER DOES NOT INVOLVE A CHANGE IN LAND USE, OR NEW DEVELOPMENT OR REDEVELOPMENT, WITH ASSOCIATED LAND-DISTURBING ACTIVITIES; AND
  - ii. BOTH THE GRANTOR AND GRANTEE FILE A DECLARATION OF INTENT, AS PROVIDED FOR IN SUBSECTION (C) OF THIS SECTION.
12. AREAS GOVERNED BY THE CHESAPEAKE BAY CRITICAL AREA PROTECTION LAW, NATURAL RESOURCES ARTICLE, §§8-1801-8-1817, ANNOTATED CODE OF MARYLAND, INCLUDING BUT NOT LIMITED TO THOSE AREAS UNTO WHICH CRITICAL AREA FOREST PROTECTION MEASURES HAVE BEEN EXTENDED PURSUANT TO THE NATURAL RESOURCES ARTICLE, §5-1602(C), ANNOTATED CODE OF MARYLAND.

C. DECLARATION OF INTENT.

1. THE PURPOSE OF THE DECLARATION OF INTENT IS TO VERIFY THAT THE PROPOSED ACTIVITY IS EXEMPT UNDER NATURAL RESOURCES ARTICLE, §§5-103 AND 5-1601-5-1612, ANNOTATED CODE OF MARYLAND, AND THIS CHAPTER.
2. A PERSON SEEKING AN EXEMPTION UNDER SUBSECTION (B)(3),(4),(8),(11), AND (14) OF THIS CHAPTER SHALL FILE A DECLARATION OF INTENT WITH THE DEPARTMENT.
3. THE DECLARATION OF INTENT IS EFFECTIVE FOR FIVE YEARS.
4. THE EXISTENCE OF A DECLARATION OF INTENT DOES NOT PRECLUDE ANOTHER EXEMPTED ACTIVITY ON THE PROPERTY SUBJECT TO A DECLARATION OF INTENT, IF THE ACTIVITY:

- i. DOES NOT CONFLICT WITH THE PURPOSE OF ANY EXISTING DECLARATION OF INTENT; AND
  - ii. COMPLIES WITH THE APPLICABLE REQUIREMENTS FOR AN EXEMPTED ACTIVITY.
- 5. IF A REGULATED ACTIVITY ON THE AREA COVERED BY THE DECLARATION OF INTENT OCCURS WITHIN FIVE YEARS OF THE EFFECTIVE DATE OF THE DECLARATION OF INTENT:
  - i. THERE SHALL BE AN IMMEDIATE LOSS OF EXEMPTION; OR
  - ii. THERE MAY BE A NONCOMPLIANCE ACTION TAKEN BY THE DEPARTMENT, AS APPROPRIATE, UNDER THIS CHAPTER.
- 6. AN APPLICANT MAY APPLY FOR A REGULATED ACTIVITY ON THAT AREA OF THE PROPERTY NOT COVERED UNDER THE DECLARATION OF INTENT IF THE REQUIREMENTS OF THIS CHAPTER ARE SATISFIED.
- 7. THE DEPARTMENT MAY REQUIRE A PERSON FAILING TO FILE A DECLARATION OF INTENT OF ROUND IN NONCOMPLIANCE WITH A DECLARATION OF INTENT TO:
  - i. MEET THE RETENTION, AFFORESTATION, AND REFORESTATION REQUIREMENTS ESTABLISHED IN SECTION 7.21.030 THROUGH SECTION 7.21.160 OF THIS CHAPTER.
  - ii. PAY A NONCOMPLIANCE FEE OF THIRTY CENTS PER SQUARE FOOT OF FOREST CUT OR CLEARED UNDER THE DECLARATION OF INTENT;
  - iii. BE SUBJECT TO OTHER ENFORCEMENT ACTIONS APPROPRIATE UNDER NATURAL RESOURCES ARTICLE, §§5-1601-5-1612, ANNOTATED CODE OF MARYLAND AND THIS CHAPTER; OR
  - iv. FILE A DECLARATION OF INTENT WITH THE DEPARTMENT.
- 8. 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 CHAPTER.

#### **SECTION 21.71.040 - TECHNICAL MANUAL.**

- A. THE DIRECTOR OF THE DEPARTMENT HAS THE AUTHORITY, AFTER CONSULTATION WITH THE DIRECTOR OF DNEP, TO PUBLISH A FOREST CONSERVATION TECHNICAL MANUAL, TO AMEND IT FROM TIME TO TIME, AND TO USE REASONABLE DISCRETION IN APPLYING THE GUIDELINES SET FORTH IN THE MANUAL. UNTIL SUCH TIME THAT THE DIRECTOR PUBLISHES A FOREST CONSERVATION TECHNICAL MANUAL, THE

DIRECTOR HAS THE AUTHORITY TO USE REASONABLE DISCRETION IN APPLYING THE GUIDELINES SET FOR IN THE STATE OF MARYLAND FOREST CONSERVATION TECHNICAL MANUAL. ANY CHANGES, MODIFICATIONS, OR REVISIONS TO THE CITY FOREST CONSERVATION TECHNICAL MANUAL SHALL BECOME EFFECTIVE UPON THE REVIEW, APPROVAL, AND RATIFICATION OF SUCH CHANGED BY THE CITY COUNCIL.

B. THE DEPARTMENT SHALL PREPARE AND SUBMIT TO THE CITY COUNCIL WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THIS CHAPTER, A FOREST CONSERVATION TECHNICAL MANUAL, WHICH SHALL PROVIDE SPECIFICATIONS CONSISTENT WITH THIS CHAPTER AND SHALL OTHERWISE INCLUDE, WITHOUT LIMITATION:

1. ANY METHODS THE DEPARTMENT APPROVES TO PROTECT RETAINED FORESTS AND TREES DURING CONSTRUCTION;
2. A DEFINITION OF “HEALTHY FORESTS” AS 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 DEPARTMENT SHALL SO DETERMINE;
3. A REQUIREMENT THAT ENVIRONMENTAL FEATURES MAPS OR NATURAL RESOURCES INVENTORY SHALL INCLUDE TOPOGRAPHIC CONTOURS (AT FOOT INTERVALS), STEEP SLOPES, SOIL CLASSIFICATIONS (INCLUDING HYDRIC PROPERTIES), “HEALTHY FORESTS,” AND TREES MEASURING THIRTY INCHES OR GREATER DBH, STREAMS (INTERMITTENT, PERENNIAL, EPHEMERAL), STREAM BUFFERS, CRITICAL HABITATS, NATURAL DRAINAGE COURSES, AND WETLANDS AND THEIR BUFFERS.

C. GENERAL REQUIREMENTS.

1. A PERSON SUBMITTING AN APPLICATION TO THE DEPARTMENT AFTER THE EFFECTIVE DATE OF THIS CHAPTER FOR APPROVAL OF A PLANNED DEVELOPMENT SPECIAL EXCEPTION, SUBDIVISION SITE DESIGN PLAN, OR PROJECT PLAN, OR A GRADING OR SEDIMENT CONTROL PERMIT, OR WHO HAS SUBMITTED A FOREST STAND DELINEATION FOR REVIEW, A PRELIMINARY FOREST CONSERVATION PLAN FOR REVIEW, OR A FINAL FOREST CONSERVATION PLAN FOR APPROVAL FOR A TRACT OF LAND THAT, IN ITS EXISTING OR REDEVELOPED STATE, IS 40,000 SQUARE FEET OR GREATER, SHALL:
  - i. SUBMIT TO THE DEPARTMENT A FOREST STAND DELINEATION AND A PRELIMINARY AND FINAL FOREST CONSERVATION PLAN FOR THE LOT OR TRACT ON WHICH THE DEVELOPMENT IS TO BE LOCATED; AND
  - ii. USE METHODS THE DEPARTMENT APPROVES, AS DETAILED IN THE FOREST CONSERVATION TECHNICAL MANUAL, TO PROTECT RETAINED FORESTS AND TREES DURING CONSTRUCTION. UNTIL SUCH TIME THAT



THE CITY PUBLISHES ITS OWN FOREST CONSERVATION TECHNICAL MANUAL, THE DEPARTMENT SHALL APPLY THE STANDARDS SET FORTH IN THE STATE FOREST CONSERVATION TECHNICAL MANUAL.

**SECTION 21.71.050 - LOCAL AGENCY APPLICATION.**

IF A LOCAL AGENCY OR PERSON USING STATE FUNDS SUBMITS AN APPLICATION TO CONDUCT AN ACTIVITY REGULATED BY THIS CHAPTER, THE PROVISIONS OF COMAR 08.19.04.01(D)-(G) SHALL APPLY.

**SECTION 21.71.060 - FOREST STAND DELINEATION.**

**A. CRITERIA.**

1. A FOREST STAND DELINEATION AND NATURAL RESOURCES INVENTORY, WHEN REQUIRED, SHALL BE SUBMITTED TO THE DEPARTMENT PRIOR TO THE INITIAL STAGES OF DEVELOPMENT PLAN APPROVAL AND PRIOR TO THE SUBMISSION TO THE DEPARTMENT OF A GRADING OR SEDIMENT CONTROL PERMIT APPLICATION FOR THE LAND BEING DEVELOPED.
2. THE DELINEATION SHALL BE PREPARED BY A LICENSED FORESTER, LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01A.
3. THE 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:
  - i. A TOPOGRAPHIC MAP DELINEATING INTERMITTENT AND PERENNIAL STREAMS, AND STEEP SLOPES OVER FIFTEEN PERCENT;
  - ii. A SOILS MAP DELINEATING SOILS WITH STRUCTURAL LIMITATIONS, HYDRIC SOILS, OR SOILS WITH A SOIL K VALUE GREATER THAN 0.35 ON SLOPES OF FIFTEEN PERCENT OR MORE;
  - iii. FOREST STAND MAPS INDICATING SPECIES, LOCATION, AND SIZE OF TREES AND SHOWING DOMINANT AND CO-DOMINANT FOREST TYPES;
  - iv. LOCATION OF 100-YEAR FLOODPLAINS;
  - v. INFORMATION REQUIRED BY THE CITY FOREST CONSERVATION TECHNICAL MANUAL; AND
  - vi. OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER, INCLUDING A NONTIDAL WETLANDS PLAN UPON REQUEST.
4. WITHIN THREE CALENDAR BUSINESS DAYS AFTER RECEIPT OF A FOREST STAND DELINEATION, THE DEPARTMENT SHALL REFER THE FOREST STAND

DELINEATION TO DNEP FOR REVIEW, AND DNEP SHALL POST THE FOREST STAND DELINEATION ON ITS WEBSITE FOR AT LEAST FIFTEEN CALENDAR DAYS AND PROVIDE DIRECTIONS AS TO HOW THE PUBLIC MAY SEND OR DELIVER WRITTEN COMMENTS, TESTIMONY, OR DOCUMENTATION PERTAINING TO THE FOREST STAND DELINEATION. THE WEBSITE POSTING REQUIREMENT SHALL APPLY TO ANY AMENDMENTS OR REVISIONS TO THE FOREST STAND DELINEATION. THE DEPARTMENT AND DNEP SHALL PROMPTLY EXCHANGE ALL COMMENTS, TESTIMONY, AND DOCUMENTATION RECEIVED FROM THE PUBLIC.

5. NO LATER THAN TWENTY CALENDAR DAYS AFTER THE RECEIPT OF THE FOREST STAND DELINEATION, DNEP SHALL SENT WRITTEN NOTIFICATION TO THE DEPARTMENT WHETHER IT CERTIFIES THAT THE FOREST STAND DELINEATION IS COMPLETE AND CORRECT. IF SO, THE WRITTEN NOTIFICATION SHALL INDICATE HOW THE FOREST STAND DELINEATION IS COMPLETE AND CORRECT AND HOW IT MEETS ALL THE REQUIREMENTS OF THIS CHAPTER. THE DEPARTMENT SHALL SEND WRITTEN NOTIFICATION OF THE CERTIFICATION TO THE APPLICANT WITHIN 30 DAYS OF RECEIPT OF THE FOREST STAND DELINEATION.
6. IF DNEP DOES NOT CERTIFY A FOREST STAND DELINEATION AS COMPLETE AND CORRECT, DNEP SHALL SEND WRITTEN NOTIFICATION TO THE DEPARTMENT TO THIS EFFECT AND INDICATE THE DEFICIENCIES IN THE FOREST STAND DELINEATION. THE DEPARTMENT SHALL SEND WRITTEN NOTIFICATION TO THE APPLICANT OF DNEP'S LACK OF CERTIFICATION AND INDICATE THE DEFICIENCIES IN THE FOREST STAND DELINEATION, AND OF THE RIGHT TO RESUBMIT.
7. DNEP SHALL POST ITS DIRECTOR'S REVIEW COMMENTS APPLICABLE TO A FOREST STAND DELINEATION WITHIN TWENTY-FOUR HOURS OF THEIR REDUCTION TO WRITING. DNEP SHALL ALSO PROVIDE AN OPPORTUNITY TO THE PUBLIC TO REVIEW AND COMMENT UPON A FOREST STAND DELINEATION SUBMISSION AND RETAIN SUCH COMMENTS AS A PART OF EACH APPLICATION RECORD.
8. IF APPROVED BY THE DEPARTMENT, A SIMPLIFIED DELINEATION, A CONCEPT PLAN OR PLAT, PRELIMINARY PLAT OR PLAN, SEDIMENT CONTROL PLAN, OR OTHER APPROPRIATE DOCUMENT, VERIFIED BY A SITE VISIT, IF APPROPRIATE, MAY SUBSTITUTE FOR THE FOREST STAND DELINEATION IF:
  - i. NO FOREST COVER IS DISTURBED DURING A CONSTRUCTION ACTIVITY;  
AND
  - ii. DESIGNATED TO BE UNDER A LONG TERM PROTECTIVE AGREEMENT.
9. THE DEPARTMENT SHALL CONSIDER A SIMPLIFIED FOREST STAND DELINEATION, OR OTHER SUBSTITUTE PLAN DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION, COMPLETE IF IT INCLUDES:
  - i. ALL REQUIREMENTS UNDER SUBSECTION (A)(3)(I),(II),(IV), AND (V) OF THIS SECTION;

- ii. A MAP SHOWING EXISTING FOREST COVER AS VERIFIED BY FIELD INSPECTION; AND
  - iii. OTHER INFORMATION REQUIRED BY THIS CHAPTER.
10. AN APPROVED FOREST STAND DELINEATION MAY REMAIN IN EFFECT FOR A PERIOD NOT LONGER THAN FIVE YEARS.
11. TIME FOR SUBMITTAL.
- i. WITHIN THIRTY CALENDAR DAYS AFTER TRANSMISSION OF THE FOREST STAND DELINEATION TO DNEP FOR REVIEW AND CERTIFICATION, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING (BY EMAIL OR POSTAL LETTER) WHETHER THE FOREST STAND DELINEATION IS COMPLETE AND CORRECT. IN THE EVENT A FOREST STAND DELINEATION IS NOT COMPLETE AND CORRECT, DNEP SHALL PROVIDE TO THE DEPARTMENT AND THE DEPARTMENT SHALL TRANSMIT TO THE APPLICANT A DETAILED AND SPECIFIC LISTING OF ANY ALLEGED DEFICIENCIES AND REFERENCE TO OPTIONS AVAILABLE TO THE APPLICANT TO ADDRESS THE DEFICIENCIES.
  - ii. IF THE DEPARTMENT FAILS TO NOTIFY THE APPLICANT IN WRITING WITHIN THIRTY DAYS, THE DELINEATION SHALL BE TREATED AS COMPLETE AND CORRECT.
  - iii. THE DEPARTMENT MAY REQUIRE FURTHER INFORMATION OR PROVIDE FOR AN ADDITIONAL FIFTEEN CALENDAR DAYS UNDER EXTENUATING CIRCUMSTANCES. THE DEPARTMENT SHALL PROVIDE AN APPLICANT WITH WRITTEN NOTICE DETAILING ADDITIONAL INFORMATION REQUIRED OR THE NATURE OF THE EXTENUATING CIRCUMSTANCES NECESSITATING THE FIFTEEN CALENDAR DAY EXTENSION.

## **SECTION 21.71.070 - FOREST CONSERVATION PLAN.**

### **A. GENERAL PROVISIONS.**

- 1. IN DEVELOPING A FOREST CONSERVATION PLAN, THE APPLICANT SHALL GIVE PRIORITY TO TECHNIQUES FOR RETAINING EXISTING FOREST ON THE SITE.
- 2. IF EXISTING FOREST ON THE SITE SUBJECT TO A FOREST CONSERVATION PLAN CANNOT BE RETAINED, THE APPLICANT SHALL DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT:
  - i. HOW TECHNIQUES FOR FOREST RETENTION HAVE BEEN EXHAUSTED;
  - ii. WHY THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN NATURAL RESOURCES ARTICLE, §5-1607(C)(1), ANNOTATED CODE OF

MARYLAND, CANNOT BE LEFT IN AN UNDISTURBED CONDITION:

- a. IF PRIORITY FORESTS AND PRIORITY AREAS CANNOT BE LEFT UNDISTURBED, HOW THE SEQUENCE FOR AFFORESTATION OR REFORESTATION WILL BE FOLLOWED IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND;
  - b. WHERE ON THE SITE IN PRIORITY AREAS IN AFFORESTATION OR REFORESTATION WILL OCCUR IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND; AND
  - iii. HOW THE DISTURBANCE TO THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN NATURAL RESOURCES ARTICLE, §5-1607(C)(2), ANNOTATED CODE OF MARYLAND, QUALIFIES FOR A VARIANCE.
3. THE APPLICANT SHALL DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT, AFTER CONSULTATION WITH DNEP AND DNEP REVIEW AND COMMENT UPON REQUIRED ELEMENTS OF A FOREST CONSERVATION PLAN, THAT THE REQUIREMENTS FOR AFFORESTATION OR REFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY ACCOMPLISHED IF THE APPLICANT PROPOSES TO MAKE A PAYMENT INTO THE LOCAL FOREST CONSERVATION FUND OR TO PURCHASE CREDITS FROM A FOREST MITIGATION BANK.
4. NONTIDAL WETLANDS. A REGULATED ACTIVITY WITHIN THE NET TRACT AREA THAT OCCURS WHOLLY OR PARTLY IN AREAS REGULATED AS NONTIDAL WETLANDS UNDER ENVIRONMENT ARTICLE, TITLE 9, ANNOTATED CODE OF MARYLAND, IS SUBJECT TO BOTH THE NONTIDAL WETLANDS REGULATORY REQUIREMENTS AND THE REQUIREMENTS OF THIS CHAPTER, SUBJECT TO THE FOLLOWING:
  - i. ANY AREA OF FOREST IN THE NET TRACT AREA, INCLUDING FOREST IN NONTIDAL WETLANDS THAT IS RETAINED, SHALL BE COUNTED TOWARDS FOREST CONSERVATION REQUIREMENTS UNDER THIS CHAPTER;
  - ii. FOR THE PURPOSE OF CALCULATING REFORESTATION MITIGATION UNDER THIS SECTION, 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;
  - iii. NONTIDAL WETLANDS SHALL BE CONSIDERED TO BE PRIORITY AREAS FOR RETENTION AND REPLACEMENT;
  - iv. 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 THE NONTIDAL WETLANDS AND TO AVOID DELAY IN THE APPROVAL PROCESS.

B. PRELIMINARY FOREST CONSERVATION PLAN.

1. A PRELIMINARY FOREST CONSERVATION PLAN SHALL BE PREPARED BY A LICENSED FORESTER, A LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01A.
2. THE PRELIMINARY FOREST CONSERVATION PLAN SHALL:
  - i. BE SUBMITTED WITH THE PRELIMINARY PLAN OF SUBDIVISION OR PROPOSED PROJECT PLAN;
  - ii. INCLUDE THE APPROVED FOREST STAND DELINEATION FOR THE SITE;
  - iii. INCLUDE A TABLE THAT LISTS THE PROPOSED VALUES OF 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 AREA;
  - iv. 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;
  - v. INCLUDE AN EXPLANATION OF HOW THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION HAVE BEEN MET;
  - vi. IN THE CASE OF AFFORESTATION OR REFORESTATION, INCLUDE A PROPOSED AFFORESTATION OR REFORESTATION PLAN;
  - vii. INCLUDE A PROPOSED CONSTRUCTION TIMETABLE SHOWING THE SEQUENCE OF FOREST CONSERVATION PROCEDURES;
  - viii. SHOW THE PROPOSED LIMITS OF DISTURBANCE;
  - ix. SHOW PROPOSED STOCKPILE AREAS;
  - x. INCORPORATED A PROPOSED TWO YEAR MAINTENANCE

AGREEMENT THAT SHOWS HOW AREAS DESIGNATED FOR AFFORESTATION OR REFORESTATION WILL BE MAINTAINED TO ENSURE PROTECTION AND SATISFACTORY ESTABLISHMENT; AND

- xi. OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.
3. WITHIN THREE BUSINESS DAYS AFTER RECEIPT OF A PRELIMINARY FOREST CONSERVATION PLAN, THE DEPARTMENT SHALL REFER THE PRELIMINARY FOREST CONSERVATION PLAN TO DNEP FOR REVIEW AND DNEP SHALL POST THE PRELIMINARY FOREST CONSERVATION PLAN ON THEIR WEBSITE FOR AT LEAST FIFTEEN CALENDAR DAYS AND PROVIDE DIRECTIONS AS TO HOW THE PUBLIC MAY SEND OR DELIVER WRITTEN COMMENTS, TESTIMONY, OR DOCUMENTATION PERTAINING TO THE PRELIMINARY FOREST CONSERVATION PLAN. THE DEPARTMENT AND DNEP SHALL PROMPTLY EXCHANGE ALL COMMENTS, TESTIMONY, AND DOCUMENTATION RECEIVED FROM THE PUBLIC. AT LEAST FIVE CALENDAR DAYS PRIOR TO THE SUBMISSION OF A PROPOSED PRELIMINARY FOREST CONSERVATION PLAN, THE APPLICANT SUBMITTING IT SHALL HOLD A PUBLIC MEETING AND MAKE A PRESENTATION INDICATING IN DETAIL THE ANTICIPATED CONTENTS OF THE PROPOSED PRELIMINARY FOREST CONSERVATION PLAN. THE GENERAL PUBLIC AND MEMBERS OF THE ANNAPOLIS ENVIRONMENTAL COMMISSION, THE DEPARTMENT, AND DNEP MAY PARTICIPATE IN THE PUBLIC MEETING.
4. NO LATER THAN THIRTY-FIVE CALENDAR DAYS AFTER THE RECEIPT OF THE PRELIMINARY FOREST CONSERVATION PLAN, DNEP SHALL SEND WRITTEN NOTIFICATION TO THE DEPARTMENT WHETHER IT RECOMMENDS APPROVAL OF THE PRELIMINARY FOREST CONSERVATION PLAN. IF SO, THE WRITTEN NOTIFICATION SHALL INDICATE HOW THE PRELIMINARY FOREST CONSERVATION PLAN MEETS ALL REQUIREMENTS OF THIS CHAPTER. IF THE DEPARTMENT AGREES WITH DNEP, THE DEPARTMENT SHALL SEND WRITTEN NOTIFICATION OF THE APPROVAL TO THE APPLICANT WITHIN THIRTY-FIVE DAYS OF RECEIPT OF THE PRELIMINARY FOREST CONSERVATION PLAN. A PRELIMINARY FOREST CONSERVATION PLAN THAT HAS BEEN RECOMMENDED FOR APPROVAL BY THE DEPARTMENT AND DNEP AS FINAL SHALL BE SUBMITTED TO THE PLANNING COMMISSION OR THE ZONING BOARD OF APPEALS WITH THE APPLICABLE APPLICATION FOR A DEVELOPMENT PLAN, FOR FINAL DETERMINATION. IF THE DEPARTMENT DOES NOT AGREE WITH DNEP'S RECOMMENDATION, THE DEPARTMENT SHALL OVERRIDE DNEP'S RECOMMENDATION, AND, WITHIN THIRTY-FIVE DAYS AFTER THE RECEIPT OF THE PRELIMINARY FOREST CONSERVATION PLAN, RETURN THE PRELIMINARY FOREST CONSERVATION PLAN TO THE APPLICANT WITH WRITTEN NOTIFICATION OF THE DISAPPROVAL AND THE REASONS FOR THE DISAPPROVAL. IN THE EVENT DNEP FINDS THAT THE PRELIMINARY FOREST CONSERVATION PLAN DOES NOT MEET THE REQUIREMENTS OF THIS CHAPTER, DNEP SHALL TRANSMIT NOTICE TO THE DEPARTMENT OF THE REASONS FOR ITS DETERMINATION. IN THE EVENT THE DEPARTMENT DETERMINES THAT THE REASONS FOR DNEP'S NON-APPROVAL RECOMMENDATION ARE CONSISTENT WITH THIS CHAPTER, THE DEPARTMENT SHALL SO NOTIFY THE APPLICANT. UPON RECEIPT OF SUCH NOTICE, AN

APPLICANT MAY RESUBMIT ITS PRELIMINARY FOREST CONSERVATION PLAN ADDRESSING ALL NOTED DEFICIENCIES. TO THE EXTENT THE DEPARTMENT DISAGREES WITH DNEP'S REASONS TO NOT RECOMMEND APPROVAL, THE DEPARTMENT MAY RECOMMEND APPROVAL OF THE PRELIMINARY FOREST CONSERVATION PLAN WITHOUT FURTHER REVIEW, PROVIDED THE DEPARTMENT CREATES AND MAINTAINS A WRITTEN RECORD OF THE REASONS FOR ITS DECISION.

5. DURING DIFFERENT STAGES OF THE REVIEW PROCESS, THE PRELIMINARY FOREST CONSERVATION PLAN MAY BE MODIFIED, PROVIDED THE DEPARTMENT APPROVES OF THE CHANGES.

#### C. FINAL FOREST CONSERVATION PLAN.

1. A FINAL FOREST CONSERVATION PLAN SHALL BE PREPARED BY A LICENSED FORESTER, A LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01A.
2. A FINAL FOREST CONSERVATION PLAN SHALL:
  - i. BE SUBMITTED PRIOR TO THE FOLLOWING:
    - a. A FINAL SUBDIVISION PLAN,
    - b. A FINAL PROJECT PLAN,
    - c. AN APPLICATION FOR A GRADING PERMIT, OR
    - d. AN APPLICATION FOR A SEDIMENT CONTROL PERMIT;
  - ii. SHOW PROPOSED LOCATIONS AND TYPES OF PROTECTIVE DEVICES TO BE USED DURING CONSTRUCTION ACTIVITIES TO PROTECT TREES AND FORESTS DESIGNATED FOR CONSERVATION;
  - iii. 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;
  - iv. INCORPORATE A BINDING TWO YEAR MAINTENANCE AGREEMENT SPECIFIED IN COMAR 08.19.05.01 THAT DETAILS HOW THE AREAS DESIGNATED FOR AFFORESTATION OR REFORESTATION WILL BE MAINTAINED TO ENSURE PROTECTION AND SATISFACTORY ESTABLISHMENT, INCLUDING:
    - a. WATERING, AND
    - b. A REINFORCEMENT PLANTING PROVISION IF SURVIVAL RATES FALL

BELOW REQUIRED STANDARDS, AS PROVIDED IN THE FOREST CONSERVATION TECHNICAL MANUAL;

- v. INCORPORATE A LONG-TERM BINDING PROTECTIVE AGREEMENT AS SPECIFIED IN COMAR 08.19.05.02 THAT:
  - a. PROVIDES PROTECTION FOR AREAS OF FOREST CONSERVATION, INCLUDING AREAS OF AFFORESTATION, REFORESTATION, AND RETENTION, AND
  - b. LIMITS USES IN AREAS OF FOREST CONSERVATION TO HOSE USES THAT ARE DESIGNATED AND CONSISTENT WITH FOREST CONSERVATION, INCLUDING RECREATIONAL ACTIVITIES AND FOREST MANAGEMENT PRACTICES THAT ARE USED TO PRESERVE FOREST;
- vi. INCLUDE THE SUBSTANTIVE ELEMENTS REQUIRED UNDER SUBSECTION (B)(2)(II)-(V), (VII)-(IX), AND (XI) OF THIS SECTION, AS FINALIZED ELEMENTS OF THE FOREST CONSERVATION PLAN; AND
- vii. OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.

3. TIME FOR SUBMITTAL.

- i. WITHIN FORTY-FIVE CALENDAR DAYS AFTER RECEIPT OF THE FINAL FOREST CONSERVATION PLAN, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING WHETHER THE FOREST CONSERVATION PLAN IS COMPLETE AND ACCEPTABLE.
- ii. IF THE DEPARTMENT FAILS TO NOTIFY THE APPLICANT WITHIN FORTY-FIVE CALENDAR DAYS, THE PLAN SHALL BE TREATED AS COMPLETE AND APPROVED.
- iii. THE DEPARTMENT MAY REQUIRE FURTHER INFORMATION OR EXTEND THE DEADLINE FOR AN ADDITIONAL FIFTEEN CALENDAR DAYS UNDER EXTENUATING CIRCUMSTANCES.
- iv. AT THE REQUEST OF THE APPLICANT, THE DEPARTMENT MAY EXTEND THE DEADLINE UNDER EXTENUATING CIRCUMSTANCES.

4. THE DEPARTMENT MAY REVOKE AN APPROVED FOREST CONSERVATION PLAN IF IT FINDS THAT:

- i. A PROVISION OF THE PLAN HAS BEEN VIOLATED;
- ii. APPROVAL OF THE PLAN WAS OBTAINED THROUGH FRAUD, MISREPRESENTATION, A FALSE OR MISLEADING STATEMENT, OMISSION OF A RELEVANT OR MATERIAL FACTOR; OR



- iii. CHANGES IN THE DEVELOPMENT OR IN THE CONDITION OF THE SITE NECESSITATE PREPARATION OF A NEW OR AMENDED PLAN.
- 5. THE DEPARTMENT MAY ISSUE A STOP WORK ORDER AGAINST A PERSON WHO VIOLATES A PROVISION OF THIS CHAPTER OR A REGULATION, ORDER, APPROVED FOREST CONSERVATION PLAN, OR MAINTENANCE AGREEMENT.
- 6. BEFORE REVOKING APPROVAL OF A FOREST CONSERVATION PLAN, THE DEPARTMENT SHALL NOTIFY THE VIOLATOR IN WRITING AND PROVIDE AN OPPORTUNITY FOR A HEARING BEFORE THE DEPARTMENT DIRECTOR OR DESIGNEE.
- 7. UPON RECEIPT OF THE COMPLETED FOREST CONSERVATION PLAN AND ANY FURTHER AMENDMENTS OR CHANGES TO THE SAME, THE DEPARTMENT SHALL IMMEDIATELY POST SAID PLAN, AMENDMENTS, AND CHANGES ON THE DEPARTMENT'S WEBSITE FOR A MINIMUM OF FIFTEEN DAYS AND ACCEPT WRITTEN COMMENTS FROM THE PUBLIC.

#### **SECTION 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 40,000 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 PERCENT OF ITS NET TRACT AREA IN FOREST COVER SHALL BE AFFORESTED UP TO AT LEAST FIFTEEN 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 CHAPTER:

- 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, COSTAL BAYS AND THEIR BUFFERS, STEEP SLOPES, NONTIDAL WETLANDS, CRITICAL HABITATS, AND HEALTHY FORESTS AS DEFINED IN THE FOREST CONSERVATION TECHNICAL MANUAL; AND
- ii. CONTIGUOUS FOREST THAT CONNECTS THE LARGEST DEVELOPED 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 OR THE NATIONAL PARK SERVICE,
  - b. ARE ASSOCIATED WITH A STRUCTURE DESIGNATED AS HISTORIC BY THE MARYLAND HISTORIC TRUST OR THE NATIONAL PARK SERVICE, 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 HAVING A DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND OF:
  - a. THIRTY INCHES OR MORE, OR
  - b. SEVENTY-FIVE 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.

## **SECTION 21.71.090 - REFORESTATION.**

### **A. FOREST CONSERVATION THRESHOLD.**

1. THERE IS A FOREST CONSERVATION THRESHOLD ESTABLISHED FOR ALL LAND USE CATEGORIES, AS PROVIDED IN SUBSECTION (A)(2) OF THIS SECTION. THE FOREST CONSERVATION THRESHOLD MEANS THE PERCENTAGE OF THE NET TRACT AREA AT WHICH THE REFORESTATION REQUIREMENT CHANGES FROM A RATIO OF  $\frac{1}{4}$  ACRE PLANTED FOR EACH ACRE REMOVED ABOVE THE THRESHOLD TO A RATIO OF TWO ACRES PLANTED FOR EACH ACRE REMOVED BELOW THE THRESHOLD.
2. AFTER REASONABLE EFFORTS TO MINIMIZE THE CUTTING OR CLEARING OF TREES AND OTHER WOODY PLANTS HAVE BEEN EXHAUSTED IN THE DEVELOPMENT OF A SUBDIVISION OR PROJECT PLAN, GRADING AND SEDIMENT CONTROL ACTIVITIES, AND IMPLEMENTATION OF THE FOREST CONSERVATION PLAN, THE FOREST CONSERVATION PLAN SHALL PROVIDE FOR REFORESTATION, PURCHASE OF CREDITS FROM A FOREST MITIGATION BANK, OR PAYMENT INTO THE FOREST CONSERVATION FUND, ACCORDING TO THE FORMULA SET FORTH BELOW AND IN SUBSECTION (A)(3) OF THIS SECTION AND CONSISTENT WITH SECTION 21.71.070(A) OF THIS CHAPTER, AND THE FOLLOWING FOREST

CONSERVATION THRESHOLDS FOR THE APPLICABLE LAND USE CATEGORY:

CATEGORY OF USE	THRESHOLD PERCENTAGE
(1) AGRICULTURAL RESOURCE AND RESOURCE AREAS	50 PERCENT
(2) MEDIUM DENSITY RESIDENTIAL AREAS	25 PERCENT
(3) INSTITUTIONAL DEVELOPMENT AREAS	20 PERCENT
(4) HIGH DENSITY RESIDENTIAL AREAS	20 PERCENT
(5) PLANNED DEVELOPMENT AREAS	15 PERCENT
(6) MIXED USE AND COMMERCIAL AND INDUSTRIAL USE AREAS	15 PERCENT

3. CALCULATIONS.

- i. FOR ALL EXISTING FOREST COVER MEASURED TO THE NEAREST 1/10<sup>TH</sup> 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 ¼ 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 1/10<sup>TH</sup> 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.

**SECTION 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 OFF-SITE PROTECTION EASEMENT ON EXISTING FORESTED AREAS 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 2,500 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 AND INVOLVE 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 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 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 COSTAL BAYS AND THEIR BUFFERS, TO WIDTHS OF AT LEAST FIFTY FEET;
  - 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 300 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.

#### **SECTION 21.71.110 - PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION.**

##### **A. FOREST CONSERVATION FUND.**

1. THE DEPARTMENT SHALL HAVE AUTHORITY TO ESTABLISH A FOREST CONSERVATION FUND IN THE LOCAL PROGRAM.

2. IF A PERSON SUBJECT TO THIS CHAPTER DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT REQUIREMENTS FOR AFFORESTATION OR REFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY ACCOMPLISHED, THE PERSON SHALL CONTRIBUTE MONEY INTO THE CITY FOREST CONSERVATION FUND:

i. FOR A PROJECT INSIDE A PRIORITY FUNDING AREA, AS DEFINED IN NATURAL RESOURCES ARTICLE, §5-1610, ANNOTATED CODE OF MARYLAND, AT A RATE PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING TO BE SET BY RESOLUTION OF THE CITY COUNCIL IN THE FEE SCHEDULE, AND

ii. FOR A PROJECT OUTSIDE A PRIORITY FUNDING AREA, AT A RATE OF 36 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING UNTIL SEPTEMBER 30, 2014, WHEN THE AMOUNT SHALL BE TWENTY PERCENT HIGHER THAN THE RATE ESTABLISHED FOR A PROJECT INSIDE A PRIORITY FUNDING AREA.

3. MONEY CONTRIBUTED INSTEAD OF AFFORESTATION OR REFORESTATION UNDER THIS CHAPTER SHALL BE PAID WITHIN NINETY CALENDAR DAYS AFTER DEVELOPMENT PROJECT COMPLETION.

4. THE CITY SHALL ACCOMPLISH THE AFFORESTATION OR REFORESTATION FOR WHICH THE MONEY IS DEPOSITED WITHIN TWO YEARS OR THREE GROWING SEASONS, WHICHEVER IS A GREATER TIME PERIOD, AFTER RECEIPT OF THE MONEY.

5. MONEY DEPOSITED IN THE CITY FOREST CONSERVATION FUND:

- i. MAY BE SPENT ON THE COSTS DIRECTLY RELATED TO AFFORESTATION AND REFORESTATION, INCLUDING SITE IDENTIFICATION, ACQUISITION, PREPARATION, MAINTENANCE OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS;
- ii. SHALL BE DEPOSITED IN A SEPARATE FOREST CONSERVATION FUND; AND
- iii. MAY NOT REVERT TO THE GENERAL FUND.

6. SITES FOR AFFORESTATION OR REFORESTATION USING FUND MONEY:

- i. EXCEPT AS PROVIDED IN SUBSECTION (A)(6)(2) OF THIS SECTION, THE AFFORESTATION OR REFORESTATION REQUIREMENT UNDER THIS CHAPTER SHALL OCCUR IN THE WATERSHED IN WHICH THE PROJECT IS LOCATED WITH PRIORITY THAT THE REQUIREMENT BE MET ON LAND IN THE CITY BEFORE CONSIDERATION OF LAND OUTSIDE THE CITY.
- ii. IF THE AFFORESTATION OR REFORESTATION CANNOT BE REASONABLY ACCOMPLISHED IN THE CITY AND WATERSHED IN WHICH THE PROJECT IS LOCATED, THEN THE AFFORESTATION OR REFORESTATION SHALL OCCUR IN THE CITY OR WATERSHED IN THE STATE IN WHICH THE PROJECT IS LOCATED.

7. IF THERE IS NO LOCAL FOREST CONSERVATION FUND ESTABLISHED, A PERSON MAY CONTRIBUTE TO THE STATE FUND. THE DEPARTMENT OF NATURAL RESOURCES SHALL DETERMINE WHEN CONTRIBUTION IS ALLOWABLE UNDER COMAR 08.19.02.02I.

**SECTION 21.71.120 - PAYMENT BY CREDITS FROM A FOREST MITIGATION BANK.**

- A. IF A PERSON SUBJECT TO THIS CHAPTER DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT REQUIREMENTS FOR AFFORESTATION OR REFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY ACCOMPLISHED, THE PERSON MAY CONTRIBUTE CREDITS FROM A FOREST MITIGATION BANK. A CREDIT IS REQUIRED FOR EACH TENTH OF AN ACRE OF AN AREA OF REQUIRED PLANTING.
- B. THE CREDITS SHALL BE DEBITED FROM AN APPROVED FOREST MITIGATION BANK WITHIN NINETY CALENDAR DAYS AFTER THE DEVELOPMENT PROJECT COMPLETION.

**SECTION 21.71.130 - ESTABLISHING FOREST MITIGATION BANKS.**

- A. UPON APPROVAL OF DNEP, A PERSON MAY CREATE A FOREST MITIGATION BANK FROM WHICH APPLICANTS MAY PURCHASE CREDITS TO MEET THE AFFORESTATION AND REFORESTATION REQUIREMENTS OF THIS CHAPTER.
- B. THE FOREST MITIGATION BANK SHALL:



1. AFFOREST OR REFOREST AN AREA OF LAND IN ACCORDANCE WITH A FOREST MITIGATION BANK AGREEMENT;
2. BE PROTECTED BY AN EASEMENT, DEED RESTRICTIONS, OR COVENANTS WHICH REQUIRE THE LAND IN THE BANK TO REMAIN FORESTED IN PERPETUITY AND ARE ENFORCEABLE BY THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES;
3. LIMIT THE USE OF THE LAND IN THE BANK TO THOSE ACTIVITIES WHICH ARE NOT 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;
4. USE NATIVE PLANT MATERIALS FOR AFFORESTATION OR REFORESTATION UNLESS INAPPROPRIATE; AND
5. CAUSE TREES TO BE PLANTED WHICH:
  - i. ESTABLISH OR ENHANCE FORESTED BUFFERS ADJACENT TO INTERMITTENT AND PERENNIAL STREAMS AND COASTAL BAYS TO WIDTHS OF AT LEAST FIFTY FEET;
  - ii. ESTABLISH OR INCREASE EXISTING FORESTED CORRIDORS, WHICH, WHERE PRACTICAL, SHOULD BE A MINIMUM OF 300 FEET IN WIDTH TO FACILITATE WILDLIFE MOVEMENT, TO CONNECT EXISTING FORESTS WITHIN OR ADJACENT TO THE SITE;
  - iii. ESTABLISH OR ENHANCE FOREST BUFFERS ADJACENT TO CRITICAL HABITATS WHERE APPROPRIATE;
  - iv. ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR FLOODPLAINS;
  - v. STABILIZE SLOPES OF TWENTY-FIVE PERCENT OR GREATER;
  - vi. STABILIZE SLOPES OF FIFTEEN PERCENT OR GREATER WITH A SOIL K VALUE GREATER THAN 0.35 INCLUDING THE SLOPES OF RAVINES OR OTHER NATURAL DEPRESSIONS;
  - vii. ESTABLISH BUFFERS ADJACENT TO AREAS OF DIFFERING LAND USE WHERE APPROPRIATE, OR ADJACENT TO HIGHWAYS OR UTILITY RIGHTS-OF-WAY; OR
  - viii. ESTABLISH FOREST AREAS ADJACENT TO EXISTING FORESTS TO INCREASE THE OVERALL AREA OF CONTIGUOUS FOREST COVER, WHEN

APPROPRIATE.

C. A PERSON PROPOSING TO CREATE A FOREST MITIGATION BANK SHALL SUBMIT TO THE DEPARTMENT A:

1. COMPLETED APPLICATION ON A FORM APPROVED BY THE DEPARTMENT WHICH HAS BEEN SIGNED BY AN AUTHORIZED INDIVIDUAL IN CONFORMANCE WITH COMAR 08.19.04.02I;
2. FOREST MITIGATION BANK PLAN WHICH CONTAINS A:
  - i. VICINITY MAP OF THE PROPOSED MITIGATION BANK SITE;
  - ii. SIMPLIFIED FOREST STAND DELINEATION WHICH MEETS THE CRITERIA IN COMAR 08.19.04.02;
  - iii. DETAILED AFFORESTATION OR REFORESTATION PLAN, WHICH SHALL INCLUDE A TIMETABLE AND DESCRIPTION OF THE SITE AND SOIL PREPARATION NEEDED, 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; AND
  - iv. PROPOSED TWO YEAR MAINTENANCE AGREEMENT THAT:
    - a. SETS FORTH HOW THE AREAS AFFORESTED OR REFORESTED WILL BE MAINTAINED TO ENSURE PROTECTION AND SATISFACTORY ESTABLISHMENT,
    - b. COMPLIES WITH COMAR 08.19.05.05C(4)(A), AND
    - c. INCLUDES WATERING AND REINFORCEMENT PLANTING PROVISIONS IF SURVIVAL FALLS BELOW REQUIRED STANDARDS;
3. COPY OF THE DEED TO THE PROPERTY;
4. SURVEY OR OTHER LEGALLY SUFFICIENT DESCRIPTION OF THE BANK SITE FOR INCLUSION IN THE DEEDS OF EASEMENT, DEED RESTRICTIONS, OR COVENANTS;
5. TITLE REPORT OR OTHER ASSURANCE THAT:
  - i. THE PROPERTY IS NOT ENCUMBERED BY ANY COVENANTS OR OTHER TYPES OF RESTRICTIONS WHICH WOULD IMPAIR THE PROPERTY'S USE AS A FOREST MITIGATION BANK; AND
  - ii. THERE IS LEGALLY SUFFICIENT ACCENTS TO THE FOREST MITIGATION BANK SITE WHICH CAN BE USED BY THE DEPARTMENT AND ITS ASSIGNEES TO INSPECT THE FOREST MITIGATION BANK; AND

6. DESCRIPTION OF THE SYSTEM TO BE USED BY THE PERSON OWNING AND OPERATING THE FOREST MITIGATION BANK TO IDENTIFY AND KEEP TRACK OF WHICH PORTIONS OF THE BANK HAVE BEEN DEBITED TO MEET AN APPLICANT'S OFFSITE AFFORESTATION OR REFORESTATION REQUIREMENTS.

D. THE OWNER OF AN APPROVED FOREST MITIGATION BANK SHALL ENTER INTO AN AGREEMENT WITH THE DEPARTMENT WHICH CONTAINS:

1. THE APPROVED AFFORESTATION OR REFORESTATION PLAN;
2. THE APPROVED SYSTEM FOR MARKETING AND TRACKING WHICH PORTIONS OF THE BANK HAVE BEEN DEBITED; AND
3. AN ACKNOWLEDGEMENT THAT THE BANK MAY NOT DEBIT ANY PORTION OF THE AFFORESTED OR REFORESTED LAND UNTIL TWO YEARS OF SUCCESSFUL GROWTH HAS BEEN ACHIEVED UNLESS THE BANKER HAS POSTED A BOND OR ALTERNATE FORM OF SECURITY.

#### **SECTION 21.71.140 - RECOMMENDED TREE SPECIES.**

- A. TREE SPECIES USED FOR AFFORESTATION OR REFORESTATION SHALL BE NATIVE TO THE CITY, WHEN APPROPRIATE, AND SELECTED FROM A LIST OF APPROVED SPECIES ESTABLISHED BY THE DEPARTMENT.
- B. THE DEPARTMENT SHALL ADOPT A LIST OF TREE SPECIES TO BE USED FOR ANY REQUIRED AFFORESTATION OR REFORESTATION AND INCORPORATE IT INTO THE FOREST CONSERVATION TECHNICAL MANUAL.

#### **SECTION 21.71.150 - FINANCIAL SECURITY FOR AFFORESTATION AND REFORESTATION.**

- A. A PERSON REQUIRED TO CONDUCT AFFORESTATION OR REFORESTATION UNDER THIS CHAPTER SHALL FURNISH FINANCIAL SECURITY IN THE FORM OF A BOND, AN IRREVOCABLE LETTER OF CREDIT, OR OTHER SECURITY APPROVED BY THE DEPARTMENT. THE SURETY SHALL:
  1. ASSURE THAT THE AFFORESTATION, REFORESTATION, AND THE ASSOCIATED MAINTENANCE AGREEMENT ARE CONDUCTED AND MAINTAINED IN ACCORDANCE WITH THE APPROVED FOREST CONSERVATION PLAN;
  2. BE IN AN AMOUNT EQUAL TO THE ESTIMATED COST, AS DETERMINED BY THE DEPARTMENT, OF AFFORESTATION AND REFORESTATION; AND
  3. BE IN A FORM AND OF A CONTENT APPROVED BY THE DEPARTMENT.
- B. AFTER ONE GROWING SEASON, THE PERSON REQUIRED TO FILE A BOND MAY REQUEST REDUCTION OF THE AMOUNT OF THE BOND OR OTHER FINANCIAL SECURITY BY SUBMITTING A WRITTEN REQUEST TO THE DEPARTMENT WITH A JUSTIFICATION FOR REDUCING THE BOND OR OTHER FINANCIAL SECURITY AMOUNT, INCLUDING ESTIMATED OR ACTUAL COSTS TO ENSURE AFFORESTATION OR REFORESTATION

REQUIREMENTS ARE MET.

C. THE DEPARTMENT SHALL DETERMINE WHETHER A LESSER AMOUNT IS SUFFICIENT TO COVER THE COST OF AFFORESTATION OR REFORESTATION, TAKING IN ACCOUNT THE FOLLOWING:

1. THE NUMBER OF ACRES;
2. THE PROPOSED METHOD OF AFFORESTATION OR REFORESTATION;
3. THE COST OF PLANTING MATERIALS OR REPLACEMENT MATERIALS;
4. THE COST OF MAINTENANCE OF THE AFFORESTATION OR REFORESTATION PROJECT; AND
5. OTHER RELEVANT FACTORS.

D. IF, AFTER TWO GROWING SEASONS, THE PLANTINGS ASSOCIATED WITH THE AFFORESTATION OR REFORESTATION MEET OR EXCEED THE STANDARDS OF THE FOREST CONSERVATION TECHNICAL MANUAL, THE AMOUNT OF THE CASH BOND, LETTER OF CREDIT, SURETY BOND, OR OTHER SECURITY SHALL BE RETURNED OR RELEASED.

E. A LOCAL FOREST CONSERVATION PROGRAM MAY INCORPORATE THE FINANCIAL SECURITY SET FORTH IN SUBSECTION (A)-(D) OF THIS SECTION OR IN COMAR 08.19.05.01B.

#### **SECTION 21.71.160 - STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES.**

- A. THE CITY SHALL ADOPT STANDARDS FOR THE PROTECTION OF TREES FROM CONSTRUCTION ACTIVITY.
- B. BEFORE CUTTING, CLEARING, GRADING, OR CONSTRUCTION BEGINS ON A SITE FOR WHICH A FOREST CONSERVATION PLAN IS REQUIRED BY THIS CHAPTER, THE APPLICANT SHALL DEMONSTRATE TO THE DEPARTMENT THAT PROTECTIVE DEVICES HAVE BEEN ESTABLISHED.

#### **SECTION 21.71.170 - VARIANCES.**

A. A PERSON MAY REQUEST A VARIANCE FROM THIS CHAPTER OR THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §§5-1601-5-1612, ANNOTATED CODE OF MARYLAND, IF THE PERSON DEMONSTRATES THAT ENFORCEMENT WOULD RESULT IN UNWARRANTED HARDSHIP TO THE PERSON.

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. THE DEPARTMENT SHALL MAKE FINDINGS THAT THE APPLICANT HAS MET THE REQUIREMENTS IN SUBSECTIONS (A) AND (B) OF THIS SECTION BEFORE THE DEPARTMENT MAY GRANT A VARIANCE.
- D. NOTICE OF A REQUEST FOR A VARIANCE SHALL BE GIVEN TO THE DEPARTMENT OF NATURAL RESOURCES WITHIN FIFTEEN DAYS OF RECEIPT OF A REQUEST FOR A VARIANCE.
- E. THERE IS ESTABLISHED BY THIS CHAPTER 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, §§1-1601-5-1612, ANNOTATED CODE OF MARYLAND, OR THIS CHAPTER.

#### **SECTION 21.71.180 - ENFORCEMENT.**

##### **A. NONCOMPLIANCE FEES.**

1. A PERSON FOUND TO BE IN NONCOMPLIANCE WITH THIS CHAPTER, REGULATIONS ADOPTED UNDER THIS CHAPTER, THE FOREST CONSERVATION PLAN, OR THE ASSOCIATED TWO YEAR MAINTENANCE AGREEMENT, SHALL BE ASSESSED BY THE DEPARTMENT A PENALTY OF THIRTY CENTS PER SQUARE FOOT OF THE AREA FOUND TO BE IN NONCOMPLIANCE WITH THE REQUIRED FOREST CONSERVATION.
2. MONEY COLLECTED UNDER SUBSECTION (A)(1) OF THIS SECTION SHALL BE DEPOSITED IN THE FOREST CONSERVATION FUND AUTHORIZED BY SECTION 21.71.130 OF THIS CHAPTER, AND MAY BE USED BY THE DEPARTMENT FOR PURPOSES RELATED TO IMPLEMENTING THIS CHAPTER.

B. VIOLATION.

1. IN ADDITION TO THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, A PERSON WHO VIOLATES A PROVISION OF THIS CHAPTER OR A REGULATION OR ORDER ADOPTED OR ISSUED PURSUANT TO THIS CHAPTER MAY BE SERVED A MUNICIPAL INFRACTION CITATION BY THE DEPARTMENT. UPON A FINDING BY A COURT THAT A VIOLATION HAS OCCURRED, OR UPON AN ACKNOWLEDGEMENT OF THE PERSON THAT A VIOLATION HAS OCCURRED AS STATED IN A CITATION, OR UPON SUCH ACKNOWLEDGMENT PRIOR TO THE ISSUANCE OF A CITATION, THE PERSON SHALL ABATE THE VIOLATION AND SHALL BE SUBJECT TO A FINE TO BE SET BY RESOLUTION OF THE CITY COUNCIL.
2. EACH DAY A VIOLATION CONTINUES IS A SEPARATE VIOLATION FOR WHICH A SEPARATE CITATION MAY BE SERVED.

C. THE DEPARTMENT MAY SEEK AN INJUNCTION OR OTHER EQUITABLE RELIEF REQUIRING A PERSON TO CEASE VIOLATION OF THIS CHAPTER AND TAKE CORRECTIVE ACTION TO RESTORE OR REFOREST AN AREA.

D. THE LOCAL PROGRAM MAY ADOPT THE ENFORCEMENT PROVISIONS UNDER COMAR 08.19.06.03.

E. THE LOCAL PROGRAM SHALL PROVIDE TO THE DEPARTMENT NOTICE OF AN ENFORCEMENT ACTION WITHIN FIFTEEN DAYS AFTER THE COMMENCEMENT OF ENFORCEMENT BY THE LOCAL PROGRAM.

**SECTION 21.71.190 - ANNUAL REPORT.**

ON OR BEFORE MARCH 1 OF EACH YEAR, THE DEPARTMENT SHALL SUBMIT TO THE DEPARTMENT OF NATURAL RESOURCES A REPORT WHICH CONTAINS THE:

- A. NUMBER, LOCATION, AND TYPE OF PROJECTS SUBJECT TO THE PROVISIONS OF THIS CHAPTER;
- B. AMOUNT AND LOCATION OF ACRES CLEARED, CONSERVED, AND PLANTED, INCLUDING ANY AREAS LOCATED IN THE 100-YEAR FLOODPLAIN IN CONNECTION WITH A DEVELOPMENT PROJECT;
- C. AMOUNT OF AFFORESTATION AND REFORESTATION FEES AND NONCOMPLIANCE PENALTIES COLLECTED AND EXPENDED;
- D. COSTS OF IMPLEMENTING THE FOREST CONSERVATION PROGRAM;
- E. LOCATION AND SIZE OF ALL FOREST MITIGATION BANKS APPROVED DURING THE PAST YEAR WITH A DESCRIPTION OF THE PRIORITY AREAS AFFORESTED OR REFORESTED BY THE BANK;
- F. NUMBER OF ACRES DEBITED FROM EACH FOREST MITIGATION BANK SINCE THE LAST ANNUAL REPORT;

- G. FOREST MITIGATION BANKS INSPECTED SINCE THE LAST ANNUAL REPORT;
- H. NUMBER, LOCATION, AND TYPES OF VIOLATIONS AND TYPES OF ENFORCEMENT ACTIVITIES CONDUCTED; AND
- I. THE SIZE AND LOCATION OF ALL CONSERVED AND PLANTED FOREST AREAS SHALL BE SUBMITTED IN AN ELECTRONIC GEOGRAPHIC INFORMATION SYSTEM OR COMPUTER AIDED DESIGN FORMAT IF POSSIBLE. IF NOT POSSIBLE, THE LOCATION SHALL BE GIVEN BY MARYLAND STATE PLANE GRID COORDINATES AND 8 DIGIT SUBWATERSHED.

**SECTION 21.71.200 - BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES.**

THE DEPARTMENT SHALL SUBMIT THE NECESSARY DOCUMENTATION TO COMPLY WITH COMAR 08.19.02.04.

**SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

**EXPLANATION**

CAPITAL LETTERS indicate matter added to existing law.

~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates amendments.