

TITLE 6. FOREST CONSERVATION

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§ 33-6-101. DEFINITIONS.

(a) *In general.* In this title the following words have the meanings indicated.

(b) *Agricultural activity.*

(1) (i) “Agricultural activity” means farming activities for production of food and fiber products, the grazing and raising of livestock, aquaculture, sod production, orchards, nurseries and other products cultivated as part of a recognized commercial enterprise and in accordance with a soil conservation and water quality plan approved by the Baltimore County Soil Conservation District.

(ii) "Agricultural activity" includes plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting.

(2) "Agricultural activity" does not include commercial logging and timber harvesting operations.

(c) *Agricultural and resource area.* "Agricultural and resource areas" means an area zoned for densities of less than or equal to one dwelling unit per 5 acres and corresponds to county zoning classifications R.C.2, R.C.4, R.C.20, or R.C.50.

(d) *Agricultural support building.*

(1) "Agricultural support building" means a building necessary to sustain an agricultural activity.

(2) "Agricultural support building" does not include a human residence.

(e) *Applicant.* "Applicant" means a person who:

(1) Is applying for subdivision or development approval, project plan approval, a building permit, a grading permit, or erosion and sediment control plan approval; or

(2) Has received approval of a forest stand delineation or forest conservation plan.

(f) *Champion tree.* "Champion tree" means the largest tree of its species within the United States, the state, or the county.

(g) *Commercial and industrial use area.* "Commercial and industrial use area" means an area zoned for manufacturing operations, office complexes, shopping centers and other similar uses and their associated storage areas, yarding, and parking areas, and corresponds to county zoning classifications R-O, R.C.C., B.L., B.M., B.R., M.R., M.L.R., M.L., M.H., S-E, B.M.M., or B.M.B.

(h) *Commercial logging or timber harvesting operations.* "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.*

(1) "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area.

(2) A critical habitat area shall:

(i) Be likely to contribute to the long-term survival of the species;

(ii) Be likely to be occupied by the species for the foreseeable future; and

(iii) Constitute habitat of endangered species, threatened species, or both under the State Endangered Species of Fish Conservation Act and the State Nongame and Endangered Species Conservation Act.

(j) *Declaration of intent.* “Declaration of intent” means a signed and notarized statement by a landowner or the landowner's agent on a form required by the Department, certifying that the activity on the landowner's property:

- (1) Is for certain activities exempted under this title,
- (2) Does not circumvent the requirements of this title, and
- (3) Does not conflict with the purposes of any other declaration of intent.

(k) *Department.* “Department” means the Department of Environmental Protection and Sustainability.

(l) *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, unless the redevelopment project is located on an impervious tract or a tract which is not forested. However, landscaping must be provided on the tract in accordance with standards adopted in the manual of landscaping standards.

(m) *Development project completion.* “Development project completion” means, for the purposes of afforestation, reforestation, or payment into a fund:

- (1) The release of the public works agreement security on residential projects, if required;
- (2) The release of the use and occupancy permit on non-residential projects;
- (3) Acceptance of the project's streets, utilities, and public services by the county; or
- (4) Designation by the county that a particular stage of a staged development project, including a Planned Unit Development, has been completed.

(n) *Erosion and sediment control approval.* “Erosion and sediment control approval” means the authorization of an activity regulated under an erosion and sediment control plan as provided in Title 4 of the Environment Article of the Annotated Code of Maryland.

(o) *Forest*. "Forest" includes:

- (1) Areas that have at least 100 live trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger;
- (2) Areas with mature trees that provide a contiguous canopy over unimproved land; and
- (3) Areas that have been cut but not cleared.

(p) *Forest buffer*. "Forest buffer" has the meaning stated in Title 5 of this article.

(q) *Forest conservation*. "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*. "Forest conservation and management agreement" means an agreement as stated in § 8-211 of the Tax-Property Article of the Annotated Code of Maryland.

(s) *Forest conservation plan*. "Forest conservation plan" means a plan approved in accordance with this title.

(t) *Forest cover*. "Forest cover" means the area of a site that is a forest.

(u) *Forest establishment and maintenance agreement*. "Forest establishment and maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans required under this title.

(v) *Forest stand delineation*. "Forest stand delineation" means the methodology for evaluating the existing vegetation on a site, as provided in the Forest Conservation Technical Manual.

(w) *Growing season*. "Growing season" means the period of consecutive frost-free days as stated in the Baltimore County soil survey.

(x) *High density residential area*.

(1) "High density residential area" means an area zoned for densities greater than one dwelling unit per acre and corresponds to the county zoning classifications of D.R.2, D.R.3.5, D.R.5.5, D.R.10.5, D.R.16 or R-O-A.

(2) "High density residential area" includes both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service.

(y) *Institutional development area.* “Institutional development area” means schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries.

(z) *Landscaping plan.* “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 naturalized plants for all reforestation and afforestation plans when appropriate; and

(3) That is made part of an approved forest conservation plan.

(aa) *Lot.* “Lot” means a unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision, without an approved forest stand delineation and forest conservation plan.

(bb) *Medium density residential area.*

(1) “Medium density residential area” means an area zoned for densities greater than one dwelling unit per 5 acres and less than or equal to one dwelling unit per acre and corresponds to the county zoning classifications of R.C.3, R.C.5, or D.R.1.

(2) “Medium density residential area” includes both existing and planned development and their associated infrastructure, including roads, utilities, and water and sewer service.

(cc) *Mixed use development.* “Mixed use development” means a single, relatively high density development project, usually commercial in nature, which includes two or more types of uses, and corresponds to the county zoning classifications of O.T., OR-1, OR-2, R.A.E.1, or R.A.E.2.

(dd) *Net tract area.* “Net tract area” means:

(1) Except in agriculture and resource areas, the total area of a site, including both forested and nonforested areas, to the nearest one-tenth acre, reduced by the area found to be within the boundaries of the riverine floodplain and the area within any existing utility easement where tree planting is prohibited; and

(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 the area found to be within the boundaries of the riverine floodplain and the area within any existing utility easement where tree planting is prohibited.

(ee) *Offsite.* “Offsite” means outside of the limits of the area encompassed by the tract.

(ff) *Onsite*. "Onsite" means within the limits of the area encompassed by the tract, including an area classified as a riverine floodplain.

(gg) *Person*. "Person" includes the federal government.

(hh) *Planned Unit Development*. "Planned Unit 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 county with at least 20% of the land permanently dedicated to open space and corresponds to county zoning classifications of PUD-R1 or PUD-R2.

(ii) *Project plan*.

(1) "Project plan" means a construction, tree cutting, clearing, grubbing, grading, or erosion and sediment control activity on an area of 40,000 square feet or greater for a project that is not subject to the review and approval process specified in Article 32, Title 4, Subtitle 2 of the Code.

(2) "Project plan" includes county capital improvement projects.

(jj) *Public utility*. "Public utility" means any:

(1) Transmission line or electric generating station; or

(2) Water, sewer, storm drain, electric, gas, telephone, or television cable service line.

(kk) *Redevelopment*. "Redevelopment" means the process of developing land which is or has been developed.

(ll) *Reforestation*.

(1) "Reforestation" means the:

(i) Creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50% of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years; or

(ii) Establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

(2) "Reforestation" includes 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.

(mm) *Regulated activity*. "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 and when the activity is not otherwise exempt under this title:

- (1) Subdivision;
- (2) Development, including construction;
- (3) Clearing, grubbing, and grading;
- (4) An activity that requires an erosion and sediment control approval;
- (5) Project plan of a county agency; or
- (6) Logging and timber harvesting operations.

(nn) *Retention*. "Retention" means the deliberate holding and protecting of existing forest, trees, shrubs, or herbaceous plants on the site according to established standards as provided in the Forest Conservation Technical Manual.

(oo) *Special variance*.

- (1) "Special variance" means the granting of relief from this title.
- (2) "Special variance" does not include a zoning variance.

(pp) *Subdivision*. "Subdivision" means any division of a unit of land into two or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

(qq) *Tract*. "Tract" means property or a unit of land subject to an application for a grading permit, building permit, erosion and sediment control approval, development approval, subdivision approval, project plan approval, or areas subject to this title.

(rr) *Tree*. "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.

(ss) *Watershed*. "Watershed" means the 14 designated drainage areas within the three major subbasins (Patapsco River, Gunpowder River and Lower Susquehanna River) as defined in COMAR 26.08.02.08. (1988 Code, § 14-402) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 163-93, § 1, 11-17-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-6-102. PURPOSE.

The County Council has determined that to meet the requirements of §§ 5-1601 - 5-1613 of the Natural Resources Article of the Annotated Code of Maryland, the provisions of this title must be enacted. (1988 Code, § 14-401) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-103. SCOPE.

(a) *In general.* Except as provided in subsection (b) of this section, this title applies to:

(1) A person making application for a development, subdivision, project plan, building, grading, or erosion and sediment control approval on units of land 40,000 square feet or greater;

(2) A public utility not exempt under subsection (b)(5), (6), (7), (8) or (9) of this section;

(3) A unit of county government, including a public utility or public works project, making application for a development, subdivision, project plan, building, grading, or erosion and sediment control approval on areas 40,000 square feet or greater; and

(4) Except as provided in subsection (b)(3) of this section, commercial logging or timber harvesting operations.

(b) *Exceptions.* This title does not apply to:

(1) Highway construction activities under § 5-103 of the Natural Resources Article of the Annotated Code of Maryland;

(2) Areas governed by the Chesapeake Bay Critical Area protection program, Title 8, Subtitle 18 of the Natural Resources Article of the Annotated Code of Maryland;

(3) Commercial logging or timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under § 8-211 of the Tax-Property Article of the Annotated Code of Maryland, that are completed after July 1, 1991:

(i) On property located within the urban-rural demarcation line and in accordance with a current forest conservation and management agreement or a forest management plan, either of which was accepted by the Department of Natural Resources before July 1, 1992, and which:

1. Has not been the subject of application for a grading or building permit for development within 5 years after the logging or harvesting operation; and

2. Is the subject of a declaration of intent approved by the Department; or

(ii) On property located beyond the urban-rural demarcation line and in accordance with a current forest conservation and management agreement, forest management plan, or forest stewardship resource conservation plan, any of which was approved by the Department of Natural Resources and the Department, and which:

1. Has not been the subject of application for a grading or building permit for development within 5 years after the logging or harvesting operation; and

2. Is the subject of a declaration of intent approved by the Department;

(4) Agricultural activities not resulting in a change in land use category, including agricultural support buildings 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 1-year period may not receive an agricultural exemption unless the person files a declaration of intent which includes:

(i) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years after the date of the declaration; and

(ii) A sketch map of the property which shows the area to be cleared;

(5) The cutting or clearing of public utility rights-of-way licensed under the Public Utility Companies Article of the Annotated Code of Maryland or land for electric generating stations licensed under the Public Utility Companies Article of the Annotated Code of Maryland, if:

(i) Required certificates of public convenience and necessity have been issued in accordance with § 5-1603(f) of the Natural Resources Article of the Annotated Code of Maryland; and

(ii) Cutting or clearing of the forest is conducted to minimize the loss of forest;

(6) Routine maintenance or emergency repairs of public utility rights-of-way licensed under the Public Utility Companies Article of the Annotated Code of Maryland;

(7) Except for a public utility subject to paragraph (6) of this subsection, routine maintenance or emergency repairs of a public utility right-of-way if:

(i) The right-of-way existed before January 19, 1993; or

(ii) The initial construction of the right-of-way was approved under this title;

(8) The construction of a public utility or highway within a utility right-of-way or highway right-of-way if:

(i) The right-of-way existed before January 19, 1993; and

(ii) A forest does not exist within the right-of-way;

(9) Activities, including construction, of a linear nature conducted by a public utility on more than one lot if the activity:

(i) Is not within the boundaries of a proposed development;

(ii) Does not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest; and

(iii) 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 title;

(10) Any forest clearing activity conducted on a single lot of any size if the lot existed before January 1, 1993 and if the activity:

(i) Does not result in the cumulative cutting, clearing, or grading of more than 40,000 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 forest conservation plan approved under this title; and

(iii) Is the subject of a declaration of intent stating that the lot will not be the subject of a regulated activity within 5 years after the cutting, clearing, or grading of forest;

(11) Strip or deep mining of coal regulated under Title 15 of the Environment Article of the Annotated Code of Maryland;

(12) Noncoal surface mining regulated under Title 15 of the Environment Article of the Annotated Code of Maryland;

(13) An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:

(i) Does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest; and

(ii) Is the subject of a declaration of intent stating that transfer of ownership may result in a loss of exemption;

(14)(i) Development under a valid CRG approved before July 1, 1991 under Article 32 of the Code; or

(ii) A valid final development plan approved before January 1, 1993 under the Baltimore County Zoning Regulations for a CRG approved between July 1, 1991 and December 31, 1992;

(15) Development under a valid CRG approved before January 1, 1993 for a commercial or industrial CRG, in accordance with Article 32 of the Code;

(16) Development under a valid development plan, in accordance with Article 32 of the Code which was accepted for filing before January 1, 1993;

(17) Development under a valid 3-lot or less subdivision plan approved before January 1, 1993;

(18) Grading and sediment control activities under a valid, unexpired grading plan, erosion and sediment control plan, or grading permit approved by the county before January 1, 1993; grading and sediment control activities for development projects must be in accordance with all appropriate state and county laws, rules, and regulations;

(19) Development under a valid Planned Unit Development that, before January 1, 1993, has:

(i) Met all requirements for Planned Unit Development approval; and

(ii) Obtained initial development plan approval by the county;

(20) 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 or 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;

(21) A county capital improvement project for which the preliminary site design plan has been completed before January 1, 1993; and

(22) A county capital improvement project that:

(i) Does not result in the cumulative cutting, clearing, or grading of more than 40,000 square feet of forest; and

(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 title.

(1988 Code, § 14-403) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-104. DECLARATION OF INTENT.

(a) *Purpose.* The purpose of the declaration of intent is to verify that the proposed activity is exempt from the provisions of this title.

(b) *Required.* A person seeking an exemption under § 33-6-103(b)(3), (4), (10), (13) or (20) of this title shall file a declaration of intent with the Department.

(c) *Effective period.* The declaration of intent is effective for 5 years.

(d) *Nonpreclusion.* 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:

- (1) Does not conflict with the purpose of any existing declaration of intent; and
- (2) Complies with the applicable requirements for an exempted activity.

(e) *Regulated activity.* If a regulated activity occurs on the area covered by the declaration of intent within 5 years after the effective date of the declaration of intent:

- (1) There shall be an immediate loss of exemption; or
- (2) There may be a noncompliance action taken by the Department, as appropriate, under this title.

(f) *Regulated activities authorized.* An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the applicant complies with the requirements of this title.

(g) *Failure to file.* The Department may require a person who fails to file a declaration of intent or who is found in noncompliance with a declaration of intent to:

- (1) Comply with the retention, afforestation, and reforestation requirements established in this title;
- (2) Pay a noncompliance fee of \$1.20 per square foot of forest cut or cleared under the declaration of intent;
- (3) Be subject to other enforcement actions appropriate under this title; and
- (4) File a declaration of intent with the Department.

(h) *Consideration for enforcement.* 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 was intentional and willful.

(1988 Code, § 14-404) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-105. GENERAL REQUIREMENTS FOR REGULATED ACTIVITIES.

(a) *In general.* Unless exempt under § 33-6-103(b) of this title, a person making application after January 19, 1993, for development or subdivision approval, project plan approval, a building permit, a grading permit, grading plan approval, or erosion and sediment control plan approval for an area of land of 40,000 square feet or greater shall:

(1) Submit to the Department a forest stand delineation and a forest conservation plan for the lot or parcel on which the project is located; and

(2) Use methods approved by the Department to protect retained forests and trees during timber harvesting, tree cutting, clearing, grading, and construction and to maintain forest conservation areas, including retained, afforested, and reforested areas, after project completion.

(b) *Waiver.* If the Director finds that the size, scope, and nature of the proposed regulated activity does not justify strict compliance with this title and that a waiver would be within the scope, purpose, and intent of this title, the Director may grant a waiver to the forest stand delineation or the preliminary forest conservation plan.

(c) *Application of COMAR.* If a county agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01 D through G apply.

(1988 Code, § 14-405) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-106. QUALIFIED PROFESSIONAL TO PREPARE APPROPRIATE DOCUMENTS.

A forest stand delineation, a preliminary forest conservation plan, and a final forest conservation plan shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01.

(1988 Code, § 14-406, 14-408, 14-409) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-107. FOREST STAND DELINEATION.

(a) *Submittal.*

(1) A forest stand delineation shall be submitted and reviewed with the concept plan in accordance with and subject to § 32-4-211 of the Code.

(2) A forest stand delineation for all other regulated activities shall be submitted at the initial stages of the project plan review process.

(3) The Department shall review the forest stand delineation for all other regulated activities within 45 days after receipt of the forest stand delineation.

(b) *Use.* The forest stand delineation shall:

(1) Be used during the preliminary review process to determine the most suitable and practical areas for forest conservation; and

(2) Contain the following components:

(i) A topographic map delineating intermittent and perennial streams and steep slopes over 25%;

(ii) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil erodibility K value greater than 0.24 on slopes of 10% or more;

(iii) Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;

(iv) Location of riverine floodplains;

(v) Information required by the Forest Conservation Technical Manual; and

(vi) Other information required by this title.

(c) *Simplified forest stand delineation.*

(1) If approved by the Department, a simplified forest stand delineation may be submitted for an area:

(i) When no forest cover is disturbed during a construction activity; and

(ii) When the area is designated to be under a long term protective agreement.

(2) The Department shall consider a simplified forest stand delineation complete if it includes:

(i) All requirements under subsection (b)(2)(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 title.

(d) *Effective period.* An approved forest stand delineation may remain in effect for a period not longer than 5 years.

(e) *Preliminary forest conservation plan.* In addition to the forest stand delineation, elements in § 33-6-109(a)(2) and (3) of the preliminary forest conservation plan shall be submitted with the concept plan in accordance with Article 32 of the Code.

(1988 Code, § 14-406) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-6-108. GENERAL REQUIREMENTS FOR FOREST CONSERVATION PLANS.

(a) *Priority to techniques for retaining existing forest.* In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest onsite.

(b) *Nonretention.* If existing forest onsite that is subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:

(1) How techniques for forest retention have been investigated;

(2) Why the priority forests and priority areas specified in § 5-1607(c) of the Natural Resources Article of the Annotated Code of Maryland cannot be left in an undisturbed condition;

(3) If priority forests and priority areas cannot be left undisturbed, how the afforestation or reforestation will be carried out in compliance with this title; and

(4) Where onsite in priority areas afforestation or reforestation will occur in compliance with this title.

(c) *Payment into fund -- Nonretention.* If the applicant has demonstrated to the satisfaction of the Department that the requirements for forest retention onsite have been investigated, the applicant may propose to make a payment into the Baltimore County Forest Conservation Fund instead of afforestation or reforestation.

(d) *Same — Impervious area.* If the applicant is proposing to redevelop an existing impervious area outside of any forest buffer which would be required by this article, the applicant may propose to make a payment into the Baltimore County Forest Conservation Fund instead of afforestation.

(e) *Net tract area requirements.* A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Title 5, Subtitle 9 of the Environment Article of the Annotated Code of Maryland and COMAR 26.23.04 is subject to both the nontidal wetlands regulatory requirements and the requirements of this title, subject to the following:

(1) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted toward forest conservation requirements under this title;

(2) For the purpose of calculating reforestation mitigation under this title, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 26.23.04 shall be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity;

(3) Nontidal wetlands shall be considered to be priority areas for retention and replacement; and

(4) 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.

(1988 Code, § 14-407) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-6-109. PRELIMINARY FOREST CONSERVATION PLAN.

(a) *Required information.* A preliminary forest conservation plan shall:

(1) Be submitted and reviewed with the development plan in accordance with and subject to §§ 32-4-225 and 32-4-226 of the Code;

(2) Include a table that lists the proposed values of the following, in square feet:

(i) Net tract area;

(ii) Area of forest conservation required;

(iii) Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas; and

(iv) Area of forest conservation required for which the applicant proposes to make a payment into the Baltimore County Forest Conservation Fund;

(3) Include a clear graphic indication of the forest conservation provided onsite drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed and the corresponding size of each area of forest conservation;

(4) Include an explanation of how the provisions of § 33-6-108 of this title have been met;

(5) In the case of afforestation or reforestation, include a proposed afforestation or reforestation planting plan;

- (6) Include a proposed construction timetable showing the sequence of forest conservation procedures;
- (7) Show the proposed limits of disturbance;
- (8) Show proposed stockpile areas;
- (9) Incorporate a proposed 3-year forest establishment and maintenance agreement that shows how areas designated for afforestation or reforestation will be established and maintained to ensure protection and satisfactory establishment;
- (10) Include information required in the Forest Conservation Technical Manual; and
- (11) Include other information required by this title.

(b) *Review and approval.*

(1) Except as provided in paragraph (2) of this subsection, the review and approval of the forest stand delineation and preliminary forest conservation plan shall be subject to § 32-4-227 of the Code.

(2) If § 32-4-227 of the Code is not applicable, the review and approval of the preliminary forest conservation plan shall occur during the project plan review process.
(1988 Code, § 14-408) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-6-110. FINAL FOREST CONSERVATION PLAN.

(a) *Required provisions.* A final forest conservation plan shall:

- (1) Be reviewed and approved by the Department;
- (2) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- (3) In the case of afforestation or reforestation, include an afforestation or reforestation planting plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
- (4) Incorporate a binding 3-year forest establishment and maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be established and maintained to ensure protection and satisfactory establishment, including:
 - (i) Watering;

(ii) Suppression of competition; and

(iii) A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Technical Manual;

(5) Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:

(i) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; and

(ii) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to conserve forest;

(6) Include the substantive elements required under § 33-6-109 of this title, as finalized elements of the forest conservation plan;

(7) Contain a statement that the plan is in compliance with the 1984 watershed management agreement, as amended; and

(8) Contain other information required by this title.

(b) *Time of review.* The Department's review of a final forest conservation plan shall be concurrent with the review of the final project plan, erosion and sediment control plan, grading plan, or application for a grading permit or building permit associated with the project, as appropriate.

(c) *Department approval required.*

(1) A project plan, erosion and sediment control plan, or grading plan for regulated activities may not be approved until the final forest conservation plan has been approved by the Department.

(2) A grading permit or building permit for regulated activities may not be issued until the final forest conservation plan has been approved by the Department.

(1988 Code, § 14-409) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-111. AFFORESTATION AND RETENTION.

(a) *Afforestation.* Unless exempt under § 33-6-103(b) of this title, a person making application after January 19, 1993 for development or subdivision approval, project plan approval, a building permit, grading permit, grading plan approval, or an erosion and sediment control plan approval 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 20% of the net tract area in forest cover shall be afforested up to at least 20% of the net tract area for:

1. Agriculture and resource areas; and
2. Medium density residential areas;

(ii) 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:

1. Institutional development areas;
2. High density residential areas;
3. Mixed use development and Planned Unit Development areas; and
4. Commercial and industrial use areas; and

(2) Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in paragraph (1) of this subsection:

(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 2 to 1 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.* The following trees, shrubs, herbaceous 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 Department that reasonable efforts have been made to protect them, the plan cannot be reasonably altered, and the plan complies with all other applicable laws:

(1) Trees, shrubs, and herbaceous plants located in sensitive areas including the riverine floodplain, intermittent and perennial streams, forest buffers, steep slopes, nontidal wetlands, and critical habitat areas;

(2) Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

(3) Trees, shrubs, or herbaceous plants determined to be rare, threatened, or endangered under:

- (i) The Federal Endangered Species Act of 1973 in 16 U.S.C., Sections 1531 through 1544 and in 50 CFR Part 17;
 - (ii) The Maryland Nongame and Endangered Species Conservation Act; and
 - (iii) COMAR 08.03.08;
- (4) Trees that:
- (i) Are part of an historic site;
 - (ii) Are associated with an historic structure; or
 - (iii) Have been designated by the state or the Department as a national, state, or county champion tree; and
- (5) Any tree having a diameter measured at 4.5 feet above the ground of:
- (i) 30 inches or more; or
 - (ii) 75% 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 State Department of Natural Resources. (1988 Code, § 14-410) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-112. FOREST CONSERVATION THRESHOLD.

(a) *In general.*

(1) There is a forest conservation threshold established for all land use categories, as provided in subsection (b) of this section.

(2) The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of one-fourth acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

(b) *Percentages.* After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been investigated in the preparation of a development or subdivision plan, a project plan, and plans for grading and sediment control activities, the forest conservation plan shall provide for reforestation, or payment into the Baltimore County Forest Conservation Fund, according to the formula set forth in this section and consistent with § 33-6-107 of this title, and according to the following forest conservation thresholds for the applicable land use category:

<i>Category of Use</i>	<i>Threshold Percentage</i>
(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 development and Planned Unit Development areas	15 %
(6) Commercial and industrial use areas	15 %

(c) *Reforestation ratio.* For all existing forest cover measured to the nearest one-tenth acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of one-fourth acre planted for each acre removed.

(d) *Credit.*

(1) 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 subsection (c) of this section.

(2) The calculation of the credit shall be according to the criteria provided in the Forest Conservation Technical Manual.

(e) *Existing forest cover.* For all existing forest cover measured to the nearest one-tenth 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 2 acres planted for each acre removed below the threshold.
(1988 Code, § 14-411) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-113. PRIORITIES AND TIME REQUIREMENTS FOR AFFORESTATION AND REFORESTATION.

(a) *Priorities.* The following are considered a priority for afforestation and reforestation:

(1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 75 feet for surface water designated use I streams and 100 feet for surface water designated use III and IV streams;

(2) Establish or enhance nonforested areas on riverine floodplains, subject to the approval of the Department of Public Works;

(3) 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;

(4) Establish or enhance forest areas adjacent to critical habitat areas, where appropriate;

(5) Establish plantings to stabilize slopes of 25% or greater and slopes of 10% or greater with a soil erodibility K value greater than 0.24, including the slopes of ravines or other natural depressions;

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

(7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

(8) Use native or naturalized plant materials for afforestation or reforestation, when appropriate.

(b) *Time requirement.* A person required to conduct afforestation or reforestation under this title shall accomplish it within 1 year or 2 growing seasons, whichever is a greater time period, following development project completion, completion of a particular stage of a staged development project, or completion of a project plan.

(1988 Code, § 14-412) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-114. FOREST CONSERVATION FUND.

(a) *Establishment; purpose.*

(1) There is a Forest Conservation Fund in the Baltimore County program.

(2) (i) Subject to subsection (b) of this section, the Fund is intended to receive contributions in order to Fund costs related to:

1. Reforestation, afforestation, and implementation of this title, including site identification, acquisition, preparation, planting, and maintenance;

2. The permanent preservation of priority forests, including site identification, acquisition, and maintenance; or

3. Subject to subparagraph (ii) of this paragraph, the administration of this title after satisfaction of the requirements of items 1 and 2 of this subparagraph.

(ii) Not more than 10% of the fees contributed to the fund may be used for administrative costs.

(b) *Contribution.* If a person who is subject to this title demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money at a rate of 40 cents per square foot of the area of required planting into the Baltimore County Forest Conservation Fund.

(c) *Time for payment.*

(1) If a grading permit is not required for the proposed project, money contributed instead of afforestation or reforestation under this title shall be paid before approval of the project plan or building permit.

(2) If a grading permit is required for the proposed project, money contributed instead of afforestation or reforestation under this title shall be secured by a security approved by the Department before issuance of the grading permit and shall be paid before the close-out of the grading permit.

(d) *Forest conservation deposit account.*

(1) There is a forest conservation deposit account.

(2) Money contributed to the Baltimore County Forest Conservation Fund shall be credited to the forest conservation deposit account.

(e) *Limitation on uses.*

(1) All money deposited in the forest conservation deposit account shall be used solely for the purposes established under subsection (a) of this section and shall be accumulated in the account until a supplemental appropriation is made in the Capital Improvement Fund.

(2) Budget appropriations made under this section may not establish a continuing program that creates a financial obligation for a subsequent year's current expense operating budget.

(f) *Director determines uses.* With the approval of the County Administrative Officer and subject to the provisions of this section, the Director of the Department shall determine the proposed uses of the Forest Conservation Fund.

(g) *Location of use.* The reforestation, afforestation, or preservation requirement under this section shall occur in the county and all reasonable efforts shall be made to satisfy the requirement in the watershed in which the project is located.

(h) *Rate of preservation.*

(1) If funds from the county Forest Conservation Fund are allocated for the permanent preservation of priority forests, the Department shall permanently preserve priority forest tracts at a rate of 2 or more acres of priority forest tract for each acre of required planting for which money has been contributed to the county Forest Conservation Fund under subsection (b) of this section.

(2) This rate is required in consideration of the forest conservation threshold for agricultural and resource areas, unless the rate is waived by the State Department of Natural Resources for preservation of a specific priority forest tract.

(i) *List of priority forests.* The Department shall prepare a list of priority forests for preservation on an annual basis and shall request and consider the recommendations of the State Department of Natural Resources in the preparation of this list.

(1988 Code, § 14-413) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-6-115. APPROVED TREE SPECIES.

(a) *Established by the Department.* Tree species used for afforestation or reforestation shall be native or naturalized in the county and selected from a list of approved species established by the Department.

(b) *Inclusion in Forest Conservation Technical Manual.* The Department shall include a list of tree species to be used for any required afforestation or reforestation in the Forest Conservation Technical Manual.

(1988 Code, § 14-414) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-116. SPECIAL VARIANCES.

(a) *In general.* An applicant may apply for a special variance if the implementation of this title would result in unwarranted hardship to the applicant because of the special features of the site that is the subject of the request or as a result of other circumstances.

(b) *Application.*

(1) An applicant shall submit a petition for special variances under this section to the Department of Permits, Approvals and Inspections on forms and in accordance with regulations adopted by the Department of Permits, Approvals and Inspections.

(2) The Department of Environmental Protection and Sustainability shall determine the information required to accompany the petition necessary for its review of the petition.

(3) Petitions for special variances shall, to the extent possible, be filed with the development plan, as defined in § 32-4-101 of the Code.

(4) Upon acceptance of the petition for special variance, the Director of Permits, Approvals and Inspections shall forward the petition to the Director of Environmental Protection and Sustainability.

(5) After receiving the petition, the Director of Environmental Protection and Sustainability or the Director's designee shall review the information presented and grant or deny the petition, as authorized in this section.

(c) *Findings.*

(1) In order to grant a special variance, the Director of Environmental Protection and Sustainability or the Director's designee must:

(i) Find that compliance with the requirements in this title would cause unwarranted hardship; and

(ii) Make other findings as required in this section.

(2) The decision shall be presented in writing.

(d) *Unwarranted hardship.* For a finding of unwarranted hardship, the applicant must show:

(1) That the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the applicant of all beneficial use of the applicant's property;

(2) That the plight of the applicant is due to unique circumstances and not the general conditions in the neighborhood; or

(3) That the special variance requested will not alter the essential character of the neighborhood.

(e) *Additional findings required.* In addition to a finding of unwarranted hardship, the Director must find:

(1) That granting the special variance will not adversely affect water quality;

(2) That the special variance request does not arise from a condition or circumstance which is the result of actions taken by the applicant; and

(3) That the special variance, as granted, would be consistent with the spirit and intent of this title.

(f) *Transmittal of decision.* The decision of the Director of Environmental Protection and Sustainability shall be forwarded to the Department of Permits, Approvals and Inspections at least 5 working days before the hearing officer's hearing, for inclusion in the Hearing Officer's file, and to the applicant.

(g) *Hearing.*

(1) At the hearing, the Hearing Officer shall take judicial notice of the Director's decision.

(2) (i) If the Director's decision is to grant the special variance, it shall be considered a recommendation to the Hearing Officer, who may either grant or deny the special variance requested.

(ii) If the Hearing Officer reverses the Director's recommendation to grant the variance, the Hearing Officer's decision shall conform with subsections (c), (d), and (e) of this section.

(3) If the Director's decision is to deny the special variance, the Hearing Officer may not reverse the decision, and the Director's decision shall be fully incorporated into the Hearing Officer's decision and order.

(h) *Unforeseen circumstances; changes.*

(1) If the petition for special variance cannot be filed with the development plan due to unforeseen circumstances or if material changes are proposed to any special variance granted, the Director of Permits, Approvals and Inspections shall forward the petition or request for material change to the Director of Environmental Protection and Sustainability for the Director's review and comment in accordance with the requirements of this section.

(2) The Director of Permits, Approvals and Inspections shall then schedule a public hearing before the Hearing Officer in accordance with § 32-4-225(c) of the Code.

(i) *Projects that do not require development approval.* If a request for a special variance involves a project that does not require review in accordance with Article 32, Title 4, Subtitle 2 of the Code, the request shall be submitted directly to the Department of Environmental Protection and Sustainability for review and approval subject to subsections (a), (b)(2), (b)(5), (c), and (d) of this section.

(j) *Board of Appeals.* The Board of Appeals may grant, deny, or modify, as defined in Article 32, Title 4, Subtitle 2, Part VIII of the Code, a decision of the Director or of the Hearing Officer. (1988 Code, § 14-415) (Bill No. 224, 1992, § 1, 1-19-1993; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011)

§ 33-6-117. CERTIFICATION.**(a) Required.**

- (1) The applicant shall submit to the Department certifications at the following stages:
 - (i) On completion of any planting work required by the permit and approved plans; and
 - (ii) At the end of the required forest establishment and maintenance agreement, before the release of the security.
- (2) The required certifications shall be prepared by a licensed forester, a licensed landscape architect, or other qualified professional who meets the requirements in COMAR 08.19.06.01 and shall certify that all requirements of the forest conservation plan have been completed and inspected.

(b) "As-built" forest conservation plan. The Department shall require an "as-built" forest conservation plan to be submitted if the forest establishment is not in accordance with the approved forest conservation plan.

(1988 Code, § 14-416) (Bill No. 224, 1992, § 1; Bill No. 38-98, § 3, 6-20-1998; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-118. AUTHORITY AND ENFORCEMENT.**(a) In general.**

- (1) The Department is responsible for enforcing the provisions of this title.
- (2) The Director may adopt policies and regulations as necessary to implement the provisions of this title in accordance with Article 3, Title 7 of the Code.

(b) Enforcement. The Director may enforce the provisions of this title in accordance with Article 3, Title 6 of the Code.

(c) Revocation of approval or permit. The county may revoke or suspend any approval or permit issued by the county after written notice to the permittee for the following reasons:

- (1) Any violation of the conditions of the permit or approved plans;
- (2) Construction, grading, timber harvesting, tree cutting, clearing, or grubbing that is not in accordance with the approved plans;
- (3) Noncompliance with a correction notice or stop-work order;

(4) Changes in site characteristics upon which plan approvals and permit issuance was based; or

(5) Any violation of this title or any regulations adopted under this title.

(1988 Code, § 14-417) (Bill No. 224, 1992, § 1; Bill No. 38-98, § 3, 6-20-1998; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 3, 8-24-2006)

§ 33-6-119. MONETARY PENALTY FOR NONCOMPLIANCE.

(a) *Assessment.* The Department shall assess a person found to be in noncompliance with this title, the forest conservation plan, or the associated forest establishment and maintenance agreement the penalty of \$1.20 per square foot of the area found to be in noncompliance with the required forest conservation.

(b) *Director determines penalty.*

(1) The Director shall determine the noncompliance penalty.

(2) The person against whom the penalty is assessed has the right to meet with the Director or the Director's designee to determine mitigation of the penalty.

(c) *Use of money.* Money collected under subsection (a) of this section shall be deposited in the Baltimore County Forest Conservation Fund and may be used by the Department for purposes related to implementing this title.

(1988 Code, § 14-418) (Bill No. 224, 1992, § 1; Bill No. 38-98, § 3, 6-20-1998; Bill No. 94-02, § 2, 7-1-2004)

§ 33-6-120. OTHER PENALTIES.

The Department may seek an injunction requiring the person to cease violation of this title and take corrective action to restore or reforest an area.

(1988 Code, § 14-419) (Bill No. 224, 1992, § 1; Bill No. 38-98, § 3, 6-20-1998; Bill No. 94-02, § 2, 7-1-2004; Bill No. 82-06, § 3, 8-24-2006)

§ 33-6-121. [RESERVED].

§ 33-6-122. ANNUAL REPORT.

(a) *Maryland General Assembly.* On or before July 1 of each year, the county shall submit to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee of the Maryland General Assembly a report on:

- (1) The number, location, and type of projects subject to the provisions of this title;
- (2) The amount and location of acres cleared, conserved, and planted in connection with a development project;
- (3) The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
- (4) The costs of implementing the forest conservation program.

(b) *County Council.*

(1) On or before December 31 of each year, the Department shall submit a report to the County Council on the factors set forth in subsection (a) of this section.

(2) The report also shall outline the effects of this title on the economic development efforts of the county.

(1988 Code, § 14-421) (Bill No. 224, 1992, § 1; Bill No. 38-98, § 3, 6-20-1998; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

