160 Duke of Gloucester Street
Annapolis, MD 21401

Signature Copy
O-22-16 Amended

..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.
..Body

CITY COUNCIL OF THE
City of Annapolis

Ordinance 22-16 Amended

Introduced by: Alderman Littmann, Alderwoman Finlayson, Alderman Budge, Alderman Arnett and Mayor Pantelides

Referred to:
Economic Matters Committee
Environmental Matters Committee
Rules and City Government Committee
Planning Commission
Annapolis Environmental Commission

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 repealing and re-enacting with amendments the following portions of the Code of the City of Annapolis, 2015 Edition:

Section 17.09.025
Section 21.24.090

BY adding the following portions to the Code of the City of Annapolis, 2015 Edition:

Chapter 21.71
Section 21.71.010
Section 21.71.020
Section 21.71.030
Section 21.71.040
Section 21.71.045
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

WHEREAS the Forest Conservation Act was enacted by the State of Maryland in 1991 and the state law was adopted by reference in the city code (17.09.025B) in 1992; and

WHEREAS the State Act assigns regulatory authority to local jurisdictions and allows for the adoption of a local forest conservation act based upon a Model Ordinance; and

WHEREAS application of the State Act lacks specific reference to established City procedures and responsibilities; and

WHEREAS the Annapolis City Council wishes to implement the State Model Ordinance with amendments; and

WHEREAS Forest Stand Delineations and Forest Conservation Plans approved prior to the effective date of this Ordinance remain subject to the State Act.

NOW THEREFORE,

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)~~ 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, OR ANY APPLICATION FOR A SPECIAL EXCEPTION, 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). 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 21.24 – PLANNED DEVELOPMENTS

Section 21.24.090 - Planned development review criteria and findings.

In deciding planned development applications the Planning Commission shall make written findings based on the following:

A. The planned development is compatible with the character of the surrounding neighborhood and consistent with the Comprehensive Plan and the purposes of planned developments.

B. The proposed locations of buildings, structures, open spaces, landscape elements, and pedestrian and vehicular circulation systems are adequate, safe, and efficient and designed to minimize any adverse impact upon the surrounding area.

C. The planned development will promote high quality design and will not result in greater adverse impacts to the surrounding area compared to the development that may otherwise be permitted pursuant to the Zoning Code if a planned development were not approved.

D. The planned development complies with the planned development use standards and bulk and density standards.

E. The planned development complies with the Site Design Plan Review criteria provided in Section 21.22.080.

F. The planned development plan includes adequate provision of public facilities and the proposed infrastructure, utilities and all other proposed facilities are adequate to serve the planned development and adequately interconnect with existing public facilities.

G. THE PLANNED DEVELOPMENT COMPLIES WITH CHAPTER 21.71 OF THE ANNAPOLIS CITY CODE.

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 ONLY, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "AFFORESTATION" MEANS:

1. ESTABLISHMENT OF TREE COVER ON AN AREA FROM WHICH FOREST COVER HAS BEEN ABSENT FOR A LONG PERIOD OF TIME; OR

2. PLANTING ON OPEN AREAS ON WHICH THERE IS NO EXISTING FOREST COVER.

B. "AGRICULTURAL AND RESOURCE AREAS" MEANS UNDEVELOPED AREAS ZONED FOR DENSITIES OF LESS THAN OR EQUAL TO ONE DWELLING UNIT PER 5 ACRES.

C. "APPLICANT" MEANS A PERSON WHO HAS LAWFULLY 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 OR WHO HAS RECEIVED APPROVAL OF A FOREST STAND DELINEATION OR FOREST CONSERVATION PLAN.

D. "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.

E. "CALIPER" MEANS THE DIAMETER MEASURED AS TWO INCHES ABOVE THE ROOT COLLAR.

F. "CHAMPION TREE" MEANS THE LARGEST TREE OF ITS SPECIES WITHIN THE UNITED STATES, THE STATE, COUNTY, OR THE CITY, AS APPLICABLE.

G. "COMAR" MEANS THE MARYLAND CODE OF REGULATIONS.

H. "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, TABLE OF USES.

I. "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.

J. "CONTIGUOUS FOREST" MEANS A FOREST OF 20 ACRES OR MORE THAT CONNECTS THE LARGEST UNDEVELOPED OR VEGETATED TRACTS OF LAND WITHIN, AND ADJACENT TO, A SITE.

K. "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.

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

M. "DBH" OR "DIAMETER AT BREAST HEIGHT" MEANS A TREE DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND.

N. "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 THE ANNAPOLIS CITY CODE OR NATURAL RESOURCES ARTICLE, §§5-103 AND 5-1601---5-1612, ANNOTATED CODE OF MARYLAND,

   ii. DOES NOT CIRCUMVENT THE REQUIREMENTS OF THE ANNAPOLIS CITY CODE 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.

O. "DEPARTMENT" MEANS THE CITY DEPARTMENT OF ~~NEIGHBORHOODS AND ENVIRONMENTAL PROGRAMS~~PLANNING AND ZONING.

P. "DEVELOPMENT PLAN" MEANS A DRAWING OR DRAWINGS WHICH DELINEATE A PLANNED DEVELOPMENT, SPECIAL EXCEPTION, SUBDIVISION, SITE DESIGN PLAN, OR PROJECT PLAN, OR A GRADING OR SEDIMENT CONTROL PERMIT FOR A TRACT OF LAND THAT, IN ITS EXISTING OR REDEVELOPED STATE, IS 40,000 SQUARE FEET OR GREATER.

Q. 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.

R. "DEVELOPMENT PROJECT COMPLETION" MEANS FOR THE PURPOSES OF AFFORESTATION, REFORESTATION:

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 IN WRITING 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.

S. "ENVIRONMENT ARTICLE" MEANS THE ENVIRONMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AS AMENDED FROM TIME TO TIME.

T. "EPHEMERAL STREAM" MEANS A STREAM THAT FLOWS ONLY IN DIRECT RESPONSE TO PRECIPITATION IN THE IMMEDIATE WATERSHED OR IN RESPONSE TO THE MELTING OF A COVER OF SNOW OR ICE, AND WHICH HAS A CHANNEL BOTTOM THAT IS ALWAYS ABOVE THE LOCAL WATER TABLE.

U. 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.

V. "FOREST CONSERVATION" MEANS THE RETENTION OF EXISTING FOREST OR THE CREATION OF NEW FOREST AT THE LEVELS SET BY THE DEPARTMENT.

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

X. "FOREST CONSERVATION TECHNICAL MANUAL" MEANS THE CITY TECHNICAL MANUAL, INCORPORATED BY REFERENCE HEREIN, USED TO ESTABLISH STANDARDS OF PERFORMANCE REQUIRED IN PREPARING FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.

Y. "FOREST CONSERVATION PLAN" MEANS A PLAN APPROVED PURSUANT TO SECTIONS 21.71.070, 21.71.080, 21.71.090 AND 21.71.100 OF THIS CHAPTER.

Z. "FOREST COVER" MEANS THE AREA OF A SITE MEETING THE DEFINITION OF FOREST.

AA. "FOREST MANAGEMENT PLAN" MEANS A PLAN ESTABLISHING BEST CONSERVATION AND MANAGEMENT PRACTICES FOR A LANDOWNER IN ASSESSMENT OF THE RESOURCE VALUES OF FORESTED PROPERTY.

BB. "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.

CC. "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.

DD. "FOREST MITIGATION BANK PLAN" MEANS A PLAN SUBMITTED FOR APPROVAL OF A FOREST MITIGATION BANK TO THE DEPARTMENT, OR TO A LOCAL GOVERNMENT WITH AN APPROVED LOCAL PROGRAM, BY AN INDIVIDUAL PROPOSING TO ESTABLISH A FOREST MITIGATION BANK.

EE. "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.

FF. "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).

~~GG. "HEALTHY FORESTS" MEANS A BIOLOGICAL COMMUNITY WHERE TREES AND OTHER WOODY PLANTS DOMINATE AND COVER A LAND AREA OF 10,000 SQUARE FEET OR GREATER, WITH AT LEAST 70% CANOPY CLOSURE, ADEQUATE TREE STOCKING, NOTICEABLE NATURAL REGENERATION (INCLUDING MID-TO-LATE SUCCESSIONAL SPECIES), LESS THAN 35% AREA COVERAGE OF INVASIVE SPECIES, AND RELATIVELY FREE OF INSECT, DISEASE, STORM, AND OTHER DAMAGE (LESS THAN 45% CANOPY MORTALITY), AS THE DEPARTMENT SHALL SO DETERMINE~~.

GG. "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 IDENTIFIED AS ALL RESIDENTIAL ZONES IN THE ANNAPOLIS CITY CODE, CHAPTER 21.40.

HH. "HISTORIC SITE" OR "HISTORIC STRUCTURE" MEANS ANY SITE OR STRUCTURE THAT IS:

a. INDIVIDUALLY LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES (A LISTING MAINTAINED BY THE U.S. DEPARTMENT OF THE INTERIOR) OR PRELIMINARILY DETERMINED BY THE SECRETARY OF THE INTERIOR AS MEETING THE REQUIREMENTS FOR INDIVIDUAL LISTINGS ON THE NATIONAL REGISTER;
b. CERTIFIED OR PRELIMINARILY DETERMINED BY THE SECRETARY OF THE INTERIOR AS CONTRIBUTING TO THE HISTORICAL SIGNIFICANCE OF A REGISTERED HISTORIC DISTRICT OR A DISTRICT PRELIMINARILY DETERMINED BY THE SECRETARY TO QUALIFY AS A REGISTERED HISTORIC DISTRICT;
c. INDIVIDUALLY LISTED ON THE MARYLAND REGISTER OF HISTORIC PLACES; OR
d. INDIVIDUALLY LISTED ON THE INVENTORY OF HISTORIC PLACES MAINTAINED BY THE CITY OF ANNAPOLIS WHOSE HISTORIC PRESERVATION PROGRAM HAS BEEN CERTIFIED BY THE MARYLAND HISTORIC TRUST OR THE SECRETARY OF THE INTERIOR.

II. "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 AS IS APPLIED IN THE ANNAPOLIS CITY CODE.

JJ. "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.

KK. "LANDSCAPING PLAN" FOR PURPOSES OF THIS SECTION 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.

LL. "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.

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

NN. "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, AND WITHOUT AN APPROVED FOREST STAND DELINEATION AND FOREST CONSERVATION PLAN.

OO. "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.

PP. "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.

QQ. "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.

RR. "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, TABLE OF USES.

SS. "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.

TT. "NATURAL RESOURCES INVENTORY" MEANS A COMPILATION OF NATURAL SITE FEATURES INCLUDING FOREST DELINEATION, GEOLOGICAL DATA, TOPOGRAPHY, SOILS SERIES AND PROPERTIES, WATERSHED DATA INCLUDING FLOODPLAINS, WATER RESOURCES INCLUDING SURFACE WATER, GROUND WATER AND WETLANDS, WILDLIFE HABITATS AND CONNECTIONS, HYDRIC SOILS, SOILS WITH K FACTORS OF .35 OR GREATER, AND SLOPES OF 15% OR GREATER, AND AS FURTHER DEFINED IN THE TECHNICAL MANUAL.

UU. "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.

VV. 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 ENVIRONMENT ARTICLE, TITLE 16, ANNOTATED CODE OF MARYLAND.

WW. "OFFSITE" MEANS OUTSIDE OF THE LIMITS OF THE AREA ENCOMPASSED BY THE TRACT OR PARCEL OF RECORD ON WHICH THE ACTIVITY IS PROPOSED.

XX. "ONSITE" MEANS WITHIN THE LIMITS OF THE AREA ENCOMPASSED BY THE TRACT OR PARCEL OF RECORD ON WHICH THE ACTIVITY IS PROPOSED, INCLUDING AN AREA CLASSIFIED AS A 100-YEAR FLOODPLAIN.

YY. "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.~~

ZZ. "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.

AAA. "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.

BBB. "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.

CCC. "PLANNED UNIT DEVELOPMENT" OR "PLANNED DEVELOPMENT" FOR PURPOSES OF THIS SECTION 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.

DDD. "PLANTING PLAN" MEANS A LABELED DIAGRAM THAT SHOWS THE QUANTITIES, LOCATION, SIZE, SHAPE, COLOR, DETAILS AND SPECIFICATIONS OF SPECIFIC PLANTS TO BE USED IN THE LANDSCAPE.

EEE. "PRIORITY RETENTION AREA" MEANS:

A. SPECIFIC AREAS WITH TREES, SHRUBS AND PLANTS LOCATED IN SENSITIVE AREAS INCLUDING 100-YEAR FLOODPLAINS, INTERMITTENT, PERENNIAL AND EPHEMERAL STREAMS AND THEIR BUFFERS, COASTAL BAYS AND THEIR BUFFERS, NON-TIDAL WETLANDS AND THEIR BUFFERS, STEEP SLOPES AND THEIR BUFFERS, HYDRIC SOILS AND CRITICAL HABITATS AS FURTHER DEFINED IN THE FOREST CONSERVATION TECHNICAL MANUAL ~~DESCRIBED IN PARAGRAPH X OF THESE DEFINITIONS~~;

B. AREAS CONTAINING TREES, SHRUBS, OR PLANTS IDENTIFIED ON THE LIST OF RARE, THREATENED, AND ENDANGERED SPECIES OF THE U.S. FISH AND WILDLIFE SERVICE OR THE DEPARTMENT;

C. TREES THAT ARE PART OF A HISTORIC SITE OR ASSOCIATED WITH A HISTORIC STRUCTURE OR DESIGNATED BY THE DEPARTMENT AS A NATIONAL, STATE, OR CITY CHAMPION TREE;

D. AREAS CONTAINING ONE OR MORE SIGNIFICANT TREES;

E. AREAS OF CONTIGUOUS FOREST.~~; AND~~

~~F. AREAS OF HEALTHY FOREST.~~

FFF. "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.

GGG. "PUBLIC UTILITY" MEANS ANY:

1. FACILITY, FIXTURE OR MEANS OF TRANSMISSION OPERATED IN ASSOCIATION WITH A PUBLIC SERVICE COMPANY AS DEFINED IN PUBLIC UTILITIES ARTICLE, MD CODE ANN. § 1-101(X);

2. WATER AND SEWER SERVICES AS SPECIFIED IN TITLE 16 OF THE ANNAPOLIS CITY CODE; OR

3. CABLE TELEVISION SYSTEMS AS DEFINED IN LOCAL GOVERNMENT ARTICLE, MD CODE ANN. § 1-708 (A).

HHH. "REFORESTATION" OR "REFORESTED" MEANS:

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;

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.

III. "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 OR A SPECIAL EXCEPTION.

~~KKK~~K123. "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.

LLL. "SEDIMENT CONTROL PERMIT" MEANS THE AUTHORIZATION OF AN ACTIVITY REGULATED UNDER A SEDIMENT CONTROL PLAN AS PROVIDED IN ENVIRONMENT ARTICLE, TITLE 4, ANNOTATED CODE OF MARYLAND OR A GRADING PERMIT AS PROVIDED IN CHAPTERS 17.08 AND 17.10 OF THE ANNAPOLIS CITY CODE.

MMM. "SEEDLING" MEANS AN UNBRANCHED WOODY PLANT, LESS THAN 24 INCHES IN HEIGHT AND HAVING A DIAMETER OF LESS THAN ½ INCH MEASURED AT 2 INCHES ABOVE THE ROOT COLLAR.

NNN. "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.

OOO. "SIGNIFICANT TREE" MEANS:

a. A CHAMPION TREE;
b. OR A TREE WHICH IS AT LEAST 75% OF THE DIAMETER OF THE STATE CHAMPION TREE;
c. OR A TREE WHICH IS OF 24 INCHES DBH OR MORE AND WHICH HAS BEEN DETERMINED BY THE DEPARTMENT DIRECTOR TO BE OF NOTABLE QUALITY AND OR HIGH VALUE BECAUSE OF ITS TYPE, SIZE, AGE, HISTORICAL SIGNIFICANCE, CANOPY BENEFITS, OR WHICH OTHERWISE WARRANTS SPECIAL CONSIDERATION FOR PRESERVATION.

PPP. "STEEP SLOPE" MEANS A SLOPE OF 15% OR GREATER.

QQQ. "STEEP SLOPE BUFFER" MEANS A PROTECTIVE SETBACK FROM THE STEEP SLOPE ITSELF, REQUIRED BY THE ANNE ARUNDEL COUNTY SOIL CONSERVATION DISTRICT, THAT IS PROVIDED TO MAINTAIN THE INTEGRITY OF THE STEEP SLOPE.

RRR. "STREAM BUFFER" MEANS ALL LANDS LYING UP TO 100 FEET AND NO LESS THAN 50 FEET, MEASURED FROM THE TOP OF EACH NORMAL BANK OF A PERENNIAL OR INTERMITTENT STREAM. THE WIDTH OF THE BUFFER IS TO BE DETERMINED BY THE DIRECTOR TO PREVENT ACTIVITY FROM HAVING A DELETERIOUS EFFECT ON THE STREAM.

SSS. "STREAM RESTORATION PROJECT" MEANS AN ACTIVITY THAT:

a. IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT LOCATED WITHIN AN EXISTING STREAM, WATERWAY, OR FLOODPLAIN;

b. AVOIDS AND MINIMIZES IMPACTS TO FORESTS AND PROVIDES FOR REPLANTING ON-SITE AN EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;

c. MAYBE PERFORMED UNDER A MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, A WATERSHED IMPLEMENTATION PLAN GROWTH OFFSET, OR ANOTHER PLAN ADMINISTERED BY THE STATE OR LOCAL GOVERNMENT TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND

d. IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.

TTT. "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.

UUU. "TAX PROPERTY ARTICLE" MEANS THE TAX PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS AMENDED FROM TIME TO TIME.

VVV. "TIMBER HARVESTING" MEANS:

a. A TREE-CUTTING OPERATION AFFECTING 1 OR MORE ACRES OF FOREST OR DEVELOPED WOODLAND WITHIN A 1-YEAR INTERVAL THAT DISTURBS 5,000 SQUARE FEET OR MORE OF FOREST FLOOR;

b. DOES NOT INCLUDE GRUBBING AND CLEARING OF ROOT MASS.

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

XXX. "TRACT FOR A PLANNED UNIT DEVELOPMENT" MEANS THE ENTIRE PROPERTY SUBJECT TO A PLANNED UNIT DEVELOPMENT."

YYY. "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.

ZZZ. "UNWARRANTED HARDSHIP" MEANS THE APPLICANT HAS DEMONSTRATED~~:~~ THAT WITHOUT A VARIANCE, THE APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.

~~(1) THAT THE LAND IN QUESTION CANNOT YIELD A 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.~~

AAAA. VARIANCE.

1. "VARIANCE" MEANS AN EXEMPTION GRANTED TO AN APPLICANT FROM ONE OR MORE REQUIREMENTS OF THIS CHAPTER.

2. "VARIANCE" DOES NOT MEAN A ZONING VARIANCE.

BBBB. "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.

CCCC. "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. COMMERCIAL LOGGING AND TIMBER HARVESTING OPERATIONS, INCLUDING HARVESTING CONDUCTED SUBJECT TO THE FOREST CONSERVATION AND MANAGEMENT PROGRAM UNDER TAX-PROPERTY ARTICLE, §8-211, ANNOTATED CODE OF MARYLAND, THAT ARE COMPLETED:
   (1) BEFORE JULY 1, 1991; OR
   (2) AFTER JULY 1, 1991, ON PROPERTY WHICH:
      (A) HAS NOT BEEN THE SUBJECT OF APPLICATION FOR A GRADING PERMIT FOR DEVELOPMENT WITHIN 5 YEARS AFTER THE LOGGING OR HARVESTING OPERATION, AND

(B) IS THE SUBJECT OF A DECLARATION OF INTENT AS PROVIDED FOR IN SUBSECTION C OF THIS SECTION, APPROVED BY THE DEPARTMENT;

4. 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;

5. THE CUTTING OR CLEARING OF PUBLIC UTILITY RIGHTS-OF-WAY LICENSED UNDER PUBLIC UTILITIES ARTICLE, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND, OR LAND FOR ELECTRIC GENERATING STATIONS LICENSED UNDER PUBLIC UTILITIES ARTICLE, §§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;

6. ROUTINE MAINTENANCE OR EMERGENCY REPAIRS OF PUBLIC UTILITY RIGHTS-OF-WAY LICENSED UNDER PUBLIC UTILITIES ARTICLE, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND;

7. 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;

8. A RESIDENTIAL CONSTRUCTION ACTIVITY CONDUCTED ON AN EXISTING SINGLE LOT OF RECORD OF ANY SIZE 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;

9. STRIP OR DEEP MINING OF COAL REGULATED UNDER ENVIRONMENT ARTICLE, TITLE 15, SUBTITLE 5 OR 6, ANNOTATED CODE OF MARYLAND;

10. NONCOAL SURFACE MINING REGULATED UNDER ENVIRONMENT ARTICLE, TITLE 15, SUBTITLE 8, ANNOTATED CODE OF MARYLAND;

11. 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;

12. A PLAN OF SUBDIVISION OR A GRADING OR SEDIMENT CONTROL PLAN ADMINISTRATIVELY APPROVED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER ~~SO LONG AS THE PROJECT COMPLIES WITH THE PREVIOUSLY APPROVED FOREST CONSERVATION PLAN~~ AND THAT IS NOT SUBSEQUENTLY OVERTURNED ON APPEAL;

13. A PLANNED DEVELOPMENT, PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER, THAT HAS~~:~~ OBTAINED FINAL PLANNED DEVELOPMENT APPROVAL IN ACCORDANCE WITH SECTION 21.24.070 AND THAT IS NOT SUBSEQUENTLY OVERTURNED ON APPEAL;

~~i. MET ALL REQUIREMENTS FOR PLANNED DEVELOPMENT APPROVAL; AND~~

~~ii. OBTAINED FINAL PLANNED DEVELOPMENT APPROVAL FROM THE PLANNING COMMISSION IN ACCORDANCE WITH SECTION 21.24.070;~~

14. 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, AS PROVIDED FOR IN SUBSECTION (C) OF THIS SECTION;

15. MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, IF THE MAINTENANCE OR

RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF THE EXISTING STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE;

16. A STREAM RESTORATION PROJECT, AS DEFINED IN SECTION 21.71.020, PARAGRAPH SSS OF THIS CHAPTER, FOR WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS EXECUTED A BINDING MAINTENANCE AGREEMENT OF AT LEAST 5 YEARS WITH THE AFFECTED PROPERTY OWNER OR OWNERS;

17. A SPECIAL EXCEPTION APPLICATION THAT IS ONLY A CHANGE OF USE THAT DOES NOT INVOLVE NEW DEVELOPMENT OR REDEVELOPMENT WITH ASSOCIATED LAND-DISTURBING ACTIVITIES.

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 OR A PERSON FOUND 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 TEN DOLLARS PER SQUARE FOOT OF FOREST CUT OR CLEARED UNDER THE DECLARATION OF INTENT OR AS SET BY RESOLUTION OF THE CITY COUNCIL, WHICHEVER IS GREATER;

   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 DEPARTMENT SHALL ADOPT WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ORDINANCE A FOREST CONSERVATION TECHNICAL MANUAL. THE DEPARTMENT MAY AMEND THE MANUAL FROM TIME TO TIME. UNTIL SUCH TIME AS THE DEPARTMENT ADOPTS A FOREST CONSERVATION TECHNICAL MANUAL, THE DEPARTMENT SHALL USE THE STATE OF MARYLAND FOREST CONSERVATION TECHNICAL MANUAL.

WHENEVER THE DEPARTMENT ADOPTS OR AMENDS THE MANUAL, IT MUST PROVIDE NOTIFICATION AND INFORMATION ABOUT THE MANUAL AND ANY CHANGES THEREIN TO THE ANNAPOLIS ENVIRONMENTAL COMMISSION, THE CITY COUNCIL, AND THE CITY'S PLANNING COMMISSION.

B. THE FOREST CONSERVATION TECHNICAL MANUAL SHALL PROVIDE SPECIFICATIONS CONSISTENT WITH THIS CHAPTER INCLUDING BUT NOT LIMITED TO:

1. ANY METHODS THE DEPARTMENT APPROVES TO PROTECT RETAINED FORESTS AND TREES DURING CONSTRUCTION;

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

21.71.045 GENERAL REQUIREMENTS.

A. AFTER THE EFFECTIVE DATE OF THIS CHAPTER, 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, SHALL:

i. SUBMIT TO THE DEPARTMENT A FOREST STAND DELINEATION AND A FOREST CONSERVATION PLAN FOR THE LOT OR TRACT ON WHICH THE DEVELOPMENT IS LOCATED; AND

ii. USE METHODS THE DEPARTMENT APPROVES, AS DETAILED IN THE FOREST CONSERVATION TECHNICAL MANUAL, TO PROTECT RETAINED FORESTS AND TREES DURING CONSTRUCTION.

B. NOTICE REQUIREMENTS.

POSTING OF PROPERTY. UPON INITIAL APPLICATION FOR A FOREST

CONSERVATION ACT REVIEW, THE FOLLOWING POSTING MUST BE DONE:

1. NOTICE MUST BE POSTED ON THE PROPERTY THAT IS THE SUBJECT OF AN APPLICATION NO LESS THAN FIVE BUSINESS DAYS FOLLOWING AN APPLICATION FOR FOREST STAND DELINEATION REVIEW.

2. FAILURE TO POST WITHIN FIVE BUSINESS DAYS MAY RESULT IN THE APPLICANT'S APPLICATION BEING DETERMINED TO BE INVALID BY THE DEPARTMENT AND A NEW APPLICATION WILL NEED TO BE SUBMITTED BEFORE THE PROJECT WILL BE REVIEWED.

3. IT IS THE RESPONSIBILITY OF AN APPLICANT TO POST ANY NOTICE REQUIRED UNDER THIS SECTION ON THE PROPERTY THAT IS THE SUBJECT OF AN APPLICATION, UNLESS THE APPLICANT IS NOT THE PROPERTY OWNER, IN WHICH CASE IT IS THE RESPONSIBILITY OF THE PROPERTY OWNER.

4. THE POSTED NOTICE MUST BE OBTAINED FROM THE DEPARTMENT AND INCLUDE LANGUAGE INDICATING THAT THE PROPERTY IS UNDER FOREST CONSERVATION ACT REVIEW AND WHERE INTERESTED PARTIES MAY FIND INFORMATION ABOUT THE APPLICATION AND A COPY OF THE PLANS UNDER REVIEW.

5. THE PROPERTY MUST REMAIN POSTED UNTIL A FINAL ADMINISTRATIVE DECISION IS RENDERED ON THE FOREST CONSERVATION ACT APPLICATION.

6. ANY SIGN POSTED ON A PROPERTY BY AN APPLICANT MUST BE REMOVED BY THE APPLICANT WITHIN SEVEN DAYS FOLLOWING THE APPROVAL OF THE FOREST CONSERVATION PLAN.

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) SHALL APPLY.

SECTION 21.71.060 – FOREST STAND DELINEATION.

A. CRITERIA.

1. A FOREST STAND DELINEATION SHALL BE SUBMITTED TO THE DEPARTMENT AS THE FIRST STEP OF MAKING APPLICATION FOR THE PLANS OR PERMITS SPECIFIED IN SECTION 21.71.045.

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;

    ii. A NATURAL RESOURCES INVENTORY;

    iii. A SOILS MAP DELINEATING SOILS WITH STRUCTURAL LIMITATIONS, HYDRIC SOILS, OR SOILS WITH A SOIL K VALUE GREATER THAN 0.35 ON SLOPES OF 15 PERCENT OR MORE;

    iv. FOREST STAND MAPS INDICATING SPECIES, LOCATION, AND SIZE OF TREES AND SHOWING DOMINANT AND CO-DOMINANT FOREST TYPES;

    v. LOCATION OF 100-YEAR FLOODPLAINS;

    vi. THE LOCATION AND DELINEATION OF ALL TIDAL AND NON-TIDAL WETLANDS AND THEIR BUFFERS;

    vii. INFORMATION REQUIRED BY THE FOREST CONSERVATION TECHNICAL MANUAL; AND

    viii. OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER, INCLUDING A NONTIDAL WETLANDS PLAN UPON REQUEST.

3.4. THE DEPARTMENT SHALL POST THE FOREST STAND DELINEATION ON ITS WEBSITE WITHIN THREE BUSINESS DAYS OF RECEIPT 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 SHALL PROMPTLY POST ALL CORRESPONDENCE BETWEEN THE DEPARTMENT, AND THE APPLICANT. ALL DOCUMENTS SHALL BE RETAINED BY THE DEPARTMENT AS PART OF THE RECORD OF THE APPLICATION.

5. IF APPROVED BY THE DEPARTMENT, A SIMPLIFIED FOREST STAND 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.

4.6. THE DEPARTMENT SHALL CONSIDER A SIMPLIFIED FOREST STAND DELINEATION, OR OTHER SUBSTITUTE PLAN DESCRIBED IN SUBSECTION (A)(5) OF THIS SECTION, COMPLETE IF IT INCLUDES:

i. ALL REQUIREMENTS UNDER SUBSECTION (A)(3)(i),(ii),(iii),(v), AND (viii) OF THIS SECTION;

ii. A MAP SHOWING EXISTING FOREST COVER AS VERIFIED BY FIELD INSPECTION; AND

iii. OTHER INFORMATION REQUIRED BY THIS CHAPTER.

5.7. AN APPROVED FOREST STAND DELINEATION IS VALID FOR FIVE YEARS EXCEPT THAT THE DEPARTMENT MAY REQUIRE SUBMISSION OF A REVISED FOREST STAND DELINEATION IF SITE CONDITIONS CHANGE DURING THE FIVE-YEAR PERIOD.

6.8.TIME FOR SUBMITTAL.

i.WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF THE FSD, 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, THE DEPARTMENT SHALL TRANSMIT TO THE APPLICANT A DETAILED AND SPECIFIC LISTING OF 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 IN WRITING FURTHER INFORMATION OR PROVIDE FOR AN ADDITIONAL FIFTEEN CALENDAR DAYS UNDER EXTENUATING CIRCUMSTANCES AS DETERMINED BY THE DEPARTMENT.

7.9.IF THE APPLICANT SUBMITS TWO FOREST STAND DELINEATIONS WHICH ARE NOT FOUND TO BE COMPLETE AND CORRECT BY THE DEPARTMENT, THE DEPARTMENT SHALL, AT THE APPLICANT'S EXPENSE, ENGAGE A LICENSED FORESTER, LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01A TO COMPLETE AND SUBMIT A FOREST STAND DELINEATION ON THE APPLICANT'S BEHALF.

SECTION 21.71.070 – FOREST CONSERVATION PLAN.

A. GENERAL PROVISIONS.

1. A PRELIMINARY FOREST CONSERVATION PLAN CANNOT BE APPEALED. A FINAL FOREST CONSERVATION PLAN IS APPEALABLE AS PART OF THE APPEAL OF A FINAL ADMINISTRATIVE DECISION, PLANNING COMMISSION DECISION OR BOARD OF APPEALS DECISION SPECIFIED IN CHAPTER 21.08. <u>A STAY PENDING APPEAL SHALL BE IMPOSED DURING THE TIME ALLOWED TO FILE AN APPEAL, AND IF AN APPEAL HAS BEEN FILED, FOR SIXTY (60) DAYS THEREAFTER.</u>

2. <u>THE CITY SHALL USE BEST EFFORTS TO PROVIDE WEEKLY ELECTRONIC MAIL UPDATES TO INTERESTED AND REGISTERED USERS, IF</u>

APPLICABLE, OF NEWLY FILED OR UPDATED FCA DOCUMENTS AND NOTICES THAT ARE REQUIRED UNDER THIS CHAPTER.

3. IN DEVELOPING A FOREST CONSERVATION PLAN, THE APPLICANT SHALL GIVE PRIORITY TO TECHNIQUES FOR RETAINING EXISTING FOREST ON THE SITE. THERE IS A REBUTTABLE PRESUMPTION THAT PRIORITY RETENTION AREAS SHALL BE RETAINED. THE PRESUMPTION CAN ONLY BE REBUTTED UNDER THE CRITERIA SPECIFIED IN SECTION 21.71.080(B) OF THIS ACT.

4. 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 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.

5. THE APPLICANT SHALL DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT THAT THE REQUIREMENTS FOR AFFORESTATION OR REFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY

ACCOMPLISHED IF THE APPLICANT PROPOSES TO MAKE A PAYMENT INTO THE FOREST CONSERVATION FUND OR TO PURCHASE CREDITS FROM A FOREST MITIGATION BANK.

6. 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.

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

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~~DEVELOPMENT 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 THE SAME SCALE AS THE PROJECT PLAN 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. INCORPORATE A PROPOSED FIVE 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. THE REVIEW OF THE PRELIMINARY FOREST CONSERVATION PLAN SHALL BE CONCURRENT WITH THE REVIEW OF THE PRELIMINARY SITE PLAN.

4. THE DEPARTMENT 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.

4.5. THE DEPARTMENT SHALL HOLD A PUBLIC MEETING AT WHICH THE DEPARTMENT SHALL DESCRIBE THE APPROVAL PROCESS AND THE APPLICANT SHALL MAKE A PRESENTATION INDICATING THE CONTENTS OF THE PROPOSED PRELIMINARY FOREST CONSERVATION PLAN AND THE PROPOSED SITE DESIGN PLAN. THE GENERAL PUBLIC MAY PARTICIPATE IN THE DISCUSSION OF THE APPLICATION. THE MEETING SHALL BE RECORDED AND THE RECORDING SHALL BE RETAINED UNTIL SUCH TIME AS THE APPELLATE PERIOD TOLLS AND MADE PUBLICLY AVAILABLE. IN THE EVENT THERE ARE SIGNIFICANT MODIFICATIONS TO THE PRELIMINARY FOREST CONSERVATION PLAN, THE DEPARTMENT MAY REQUIRE AN ADDITIONAL PUBLIC MEETING IF IT DETERMINES SUCH A MEETING WOULD SERVE THE PUBLIC INTEREST.

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

SIGNIFICANT MODIFICATIONS MUST BE POSTED FOR PUBLIC REVIEW AND COMMENT.

6.7. ALL CORRESPONDENCE MATERIAL TO AN APPLICATION SHALL BE POSTED ON THE DEPARTMENT WEBSITE. COMMENTS RECEIVED SHALL BE MADE PART OF THE APPLICATION RECORD.

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 BY THE APPLICANT CONSISTENT WITH REQUIREMENTS ESTABLISHED BY THE DEPARTMENT AND THE LAW WITH 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 JUSTIFICATION FOR ANY PROPOSED DISTURBANCE OF PRIORITY RETENTION AREAS, INCLUDING REASONS WHY SUCH PRIORITY RETENTION AREAS CANNOT BE

RETAINED AND HOW THE APPLICANT SHALL REPLACE PROPOSED DISTURBED PRIORITY RETENTION AREAS THROUGH AFFORESTATION AND REFORESTATION, IN COMPLIANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

v. INCORPORATE A BINDING FIVE 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;

vi. 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 THOSE USES THAT ARE DESIGNATED AND CONSISTENT WITH FOREST CONSERVATION, INCLUDING RECREATIONAL ACTIVITIES AND FOREST MANAGEMENT PRACTICES THAT ARE USED TO PRESERVE FOREST;

vii. INCLUDE A STATEMENT OF HOW THE PROJECT WILL IMPACT THE CITY'S TREE CANOPY GOALS;

viii. 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

ix. INCLUDE OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.

3. TIME FOR NOTIFICATION.

   i. WITHIN FORTY-FIVE CALENDAR DAYS AFTER INCORPORATION OF THE PROSPECTIVE FINAL FOREST CONSERVATION PLAN INTO A COMPLETE PLAN OR PERMIT APPLICATION ASSOCIATED WITH A REGULATED ACTIVITY, THE DECISION MAKING AUTHORITY FOR SUCH PLANS SHALL NOTIFY THE APPLICANT IN WRITING WHETHER THE FOREST CONSERVATION PLAN IS COMPLETE AND ACCEPTABLE.

   ii. IF THE DECISION MAKING AUTHORITY FAILS TO NOTIFY THE APPLICANT WITHIN FORTY-FIVE CALENDAR DAYS, THE PLAN SHALL BE TREATED AS COMPLETE AND APPROVED.

   iii. THE DECISION MAKING AUTHORITY MAY REQUIRE FURTHER INFORMATION OR EXTEND THE DEADLINE FOR AN ADDITIONAL FIFTEEN CALENDAR DAYS UNDER EXTENUATING CIRCUMSTANCES IN ITS OWN DISCRETION.

   iv. AT THE REQUEST OF THE APPLICANT, THE DECISION MAKING AUTHORITY MAY EXTEND THE DEADLINE UNDER EXTENUATING CIRCUMSTANCES.

   v. THE DEPARTMENT SHALL POST THE NOTIFICATIONS DESCRIBED IN THIS SECTION AND THE FINAL FOREST CONSERVATION PLAN ON THEIR WEBSITE.

4. THE DEPARTMENT'S REVIEW OF A FINAL FOREST CONSERVATION PLAN SHALL BE CONCURRENT WITH THE REVIEW OF THE FINAL SUBDIVISION OR PROJECT PLAN, GRADING PERMIT APPLICATION, OR SEDIMENT CONTROL APPLICATION ASSOCIATED WITH THE PROJECT.

5. 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;

iii. CHANGES IN THE DEVELOPMENT OR IN THE CONDITION OF THE SITE NECESSITATE PREPARATION OF A NEW OR AMENDED PLAN; OR

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

6. 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.

7. 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.

8. UPON APPROVAL OF THE FINAL FOREST CONSERVATION PLAN THE DEPARTMENT SHALL POST THE PLAN ON THE DEPARTMENT'S WEBSITE WITHIN THREE BUSINESS DAYS.

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, COASTAL BAYS AND THEIR BUFFERS, STEEP SLOPES AND THEIR BUFFERS, NONTIDAL WETLANDS, AND CRITICAL HABITATS.~~, AND HEALTHY FORESTS; AND~~

ii. CONTIGUOUS FOREST THAT CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND WITHIN AND ADJACENT TO THE SITE.

2. THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS ARE CONSIDERED PRIORITY FOR RETENTION AND PROTECTION AND SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT HAS DEMONSTRATED, TO THE SATISFACTION OF THE DEPARTMENT, THAT THE APPLICANT QUALIFIES FOR A VARIANCE IN ACCORDANCE WITH SECTION 21.71.170 OF THIS CHAPTER:

i. TREES, SHRUBS, OR PLANTS DETERMINED TO BE RARE, THREATENED, OR ENDANGERED UNDER:

a. THE FEDERAL ENDANGERED SPECIES ACT OF 1973 IN 16 U.S.C. §§1531-1544 AND IN 50 C.F.R. 17,

b. THE MARYLAND NONGAME AND ENDANGERED SPECIES CONSERVATION ACT, NATURAL RESOURCES ARTICLE, §§10-2A-01---10-2A-09, ANNOTATED CODE OF MARYLAND, AND

c. COMAR 08.03.08;

ii. TREES THAT:

a. ARE PART OF A SITE DESIGNATED AS HISTORIC BY THE MARYLAND HISTORIC TRUST, THE NATIONAL PARK SERVICE, OR THE CITY OF ANNAPOLIS,

b. ARE ASSOCIATED WITH A STRUCTURE DESIGNATED AS HISTORIC BY THE MARYLAND HISTORIC TRUST, THE NATIONAL PARK SERVICE, OR THE CITY OF ANNAPOLIS, OR

c. HAVE BEEN DESIGNATED BY THE STATE, COUNTY, OR THE DEPARTMENT AS A NATIONAL, STATE, COUNTY OR MUNICIPALITY CHAMPION TREE; AND

iii. ANY TREE ~~HAVING A DBH OF~~:

a. HAVING A DBH OF THIRTY INCHES OR MORE, OR

b. WHICH HAS BEEN DESIGNATED AS A SIGNIFICANT TREE PURSUANT TO THIS CHAPTER.

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 ¼ 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 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) MIXED USE AND PLANNED UNIT DEVELOPMENT AREAS	15 PERCENT
(6) COMMERCIAL AND INDUSTRIAL USE AREAS	15 PERCENT

3. CALCULATIONS.

   i. FOR ALL EXISTING FOREST COVER MEASURED TO THE NEAREST 1/10TH ACRE CLEARED ON THE NET TRACT AREA ABOVE THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF THE FOREST REMOVED SHALL BE REFORESTED AT A RATIO OF 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 1/10TH ACRE CLEARED ON THE NET TRACT AREA BELOW THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED SHALL BE REFORESTED AT A RATIO OF TWO ACRES PLANTED FOR EACH ACRE REMOVED BELOW THE THRESHOLD.

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 BY SELECTIVE CLEARING OR SUPPLEMENTAL PLANTING ONSITE;

   ii. ONSITE AFFORESTATION AND REFORESTATION WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED, USING METHODS SELECTED IN ACCORDANCE WITH SUBSECTION (A)(6) OF THIS SECTION, AND THE LOCATION BEING SELECTED IN ACCORDANCE WITH THIS SUBSECTION.

   iii. OFFSITE AFFORESTATION OR REFORESTATION IN THE SAME WATERSHED 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 COASTAL BAYS AND THEIR BUFFERS, TO WIDTHS OF AT LEAST FIFTY TO 100 FEET TO PREVENT ACTIVITY CAUSING A DETRIMENTAL EFFECT TO THE WATERWAY AS DETERMINED BY THE DIRECTOR;

   ii. ESTABLISH OR INCREASE EXISTING FORESTED CORRIDORS TO CONNECT EXISTING FORESTS WITHIN OR ADJACENT TO THE SITE AND, WHERE PRACTICAL, FORESTED CORRIDORS SHOULD BE A MINIMUM OF 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. THERE IS ESTABLISHED A FOREST CONSERVATION FUND.

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 ~~AFTER CONSIDERATION OF LAND ACQUISITION COSTS,~~ SUFFICIENT TO PROVIDE FOR SITE IDENTIFICATION, ACQUISITION, PREPARATION, ONGOING MAINTENANCE COSTS AND OVERHEAD, AND

   ii. FOR A PROJECT OUTSIDE A PRIORITY FUNDING AREA, AT A RATE 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~~ PRIOR TO THE ISSUANCE OF A GRADING PERMIT.

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 OR WATERSHED IN WHICH THE PROJECT IS LOCATED, THEN THE AFFORESTATION OR REFORESTATION SHALL OCCUR IN A WATERSHED IN ANNE ARUNDEL COUNTY.

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 BY THE DEPARTMENT, 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 INCONSISTENT 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 SECTION 21.71.030 OF THIS CHAPTER;

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 SECTION 21.71.060.A.6 OF THIS CHAPTER;

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 FIVE 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 SECTION 21.71.070.C.1 OF THIS CHAPTER, 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 ACCESS 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 FIVE 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 THREE GROWING SEASONS, 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 FIVE 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. AN APPLICANT MAY REQUEST A VARIANCE FROM THIS CHAPTER OR THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §§5-1601—5-1612, ANNOTATED CODE OF MARYLAND, IF THE APPLICANT DEMONSTRATES THAT ENFORCEMENT WOULD RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT.

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 OR BY ANY PREVIOUS OWNER OF THE PROPERTY;

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 WRITTEN 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.

F. ANY VARIANCE MUST BE SUBMITTED TO THE PLANNING COMMISSION OR THE ZONING BOARD OF APPEALS, WHICHEVER THE CASE MAY BE, WITH THE PROJECT OR DEVELOPMENT PLAN APPLICATION FOR FINAL DETERMINATION. IF THE VARIANCE IS SOUGHT IN CONNECTION WITH A SITE DESIGN PLAN APPLICATION NOT REQUIRING PLANNING COMMISSION OR ZONING BOARD OF APPEALS APPROVAL, THE DEPARTMENT SHALL ISSUE A FINAL DETERMINATION ON THE VARIANCE APPLICATION.

G. VARIANCE CAN ONLY BE APPEALED AS PART OF THE FINAL ADMINISTRATIVE DECISION OR APPROVAL OF THE APPLICATION.

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 FIVE YEAR MAINTENANCE AGREEMENT, SHALL PAY A <u>MINIMUM</u>

NONCOMPLIANCE FEE OF TEN DOLLARS PER SQUARE FOOT OF THE AREA FOUND TO BE IN NONCOMPLIANCE WITH THE REQUIRED FOREST CONSERVATION ~~OR AS SET BY RESOLUTION OF THE CITY COUNCIL, WHICHEVER IS GREATER~~. THE CITY COUNCIL MAY SET A GREATER NONCOMPLIANCE FEE BY RESOLUTION.

2. IN SETTING THE NONCOMPLIANCE FEE, THE CITY COUNCIL SHALL CONSIDER LAND ACQUISITION COSTS, PLANTING COSTS, ONGOING MAINTENANCE COSTS AND OVERHEAD REQUIRED TO MITIGATE THE NONCOMPLIANCE.

3. 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. A VIOLATION OF ANY PROVISION OF THIS CHAPTER SHALL CONSTITUTE A MUNICIPAL INFRACTION AND FOR EACH VIOLATION THE PERSON OR ENTITY IN VIOLATION IS SUBJECT TO A FINE AS ESTABLISHED 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 OF NATURAL RESOURCES 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 later of the date of its passage or the date of approval by the Department of Natural Resources.

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
~~Strikethrough~~ indicates matter stricken from existing law.
Underlining indicates amendments.

ADOPTED this 26th day of September, 2016.

Aye: 9 Mayor Pantelides, Alderman Budge, Alderman Paone, Alderwoman Pindell Charles, Alderwoman Finlayson, Alderman Littmann, Alderman Kirby, Alderman Pfeiffer and Alderman Arnett.

THE ANNAPOLIS CITY COUNCIL _____ Date: 10-8-2016
Michael J. Pantelides, Mayor

ATTEST _____ Date: 10/5/16
Regina Watkins-Eldridge, MMC,
City Clerk