TITLE: Bill # 17-17 Revisions to the County Forest Resource Ordinance

FILE NUMBER: N/A

REQUEST: Consider amendments to Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) Public Hearing

PROJECT INFORMATION: N/A

APPLICANT/REPRESENTATIVES: N/A

STAFF: Michael Wilkins, Acting Director, Development Review

RECOMMENDATION: That the Planning Commission provide a recommendation to the Frederick County Council regarding the Text Amendment.

ATTACHMENTS:
Proposed Bill
Staff Report
To: Frederick County Planning Commission

From: Michael Wilkins, Acting Director, Development Review

Date: December 18, 2017

Subject: Bill #17-17 Revision to the County Forest Resource Ordinance
(By: Council President Bud Otis on behalf of the County Executive Jan Gardner)

ISSUE:
Frederick County Planning Commission review and recommendation regarding Bill 17-17, including: deleting existing provisions; adopting new provisions related to the Forest Resource Ordinance 1-21 of the Frederick County Code.

BACKGROUND:
The proposed amendments to the Forest Resource Ordinance (FRO) will increase forest conservation efforts, update definitions and agency names, and add clarifying language to various sections of the Code.

ANALYSIS:
Twelve subsections of the FRO are proposed to be amended (as outlined in Table 1). Changes to six of the twelve subsections are non-substantive changes that address existing inconsistencies within the FRO and update agency names. These minor changes are briefly discussed in Table 1 under item numbers 1-5 and 8.

The remaining changes are more substantial in nature and warrant further explanation. The goal of these amendments is to reduce forest clearing, increase the amount of new forest being planted, and restore the mitigation ratio for forest banking credits. Most of these changes will restore the Code language that was established in 2007 by Ordinance 07-25-465 and subsequently removed from the Code in 2011 by Ordinance 11-19-585.

1-21-29: Forest Banking Program
Amendment of this Code section is limited to changing the ratio for utilizing existing forest banking credits from 2:1 to 2.5:1. Under the current law, when existing forest banking credits are used to meet a FRO mitigation requirement the purchaser must obtain 2 acres of existing forest credit for each acre of mitigation that is owed. This 2:1 ratio is the state’s minimum requirement. Under the proposed 2.5:1 ratio, 2.5 acres of credit is required for each acre of mitigation that is owed.

The 2.5:1 mitigation ratio was established by the County in 2001 and was reduced to the current
2:1 ratio by Ordinance 11-19-585 in 2011. This reduction in the mitigation ratio has resulted in two negative consequences:

1. Certain property owners entered the Forest Banking Program with the expectation that they would be selling their credits at a 2.5:1 ratio. The reduction of the mitigation ratio to 2:1 has increased the time and number of transactions that are required to sell the credits they have created. Forest Bank owners have invested time, money, and labor to establish their credits and the reduction of the mitigation ratio has resulted in delaying the return on their investment.

2. The reduction of the mitigation ratio has resulted in a significant decrease in forest conservation. Since FY2012, 65 development projects have utilized 207 acres of existing forest credit to meet FRO mitigation requirements at the 2:1 mitigation ratio. If the 2.5:1 ratio was in place during this period, 259 acres of existing forest credit would have been utilized. This increase would have benefited the property owners who are enrolled in the Forest Banking program and would have resulted in 52 acres of additional forest conservation. The 52 acres of credit would have provided $234,000 of income to forest bank owners, many of whom are farmers. The additional 52 acres of mitigation would have increased mitigation costs by an average of $3,600 per development.

Restoring the 2.5:1 ratio will increase forest conservation efforts, provide additional income to the private property owners enrolled in the Forest Banking Program, and incentivize new enrollment in the Forest Banking Program, while adding minimal costs to development projects.

I-21-31: Forest Stand Delineation: Exemption for Geotechnical Testing
Prior to the 2011 FRO Ordinance, this Code section allowed limited impact to forest for septic testing and survey lines prior to receiving approval of a Forest Conservation Plan. The 2011 Ordinance added geotechnical testing. Changes to this Code section are limited to reducing the 40,000 square foot clearing limitation to 20,000 square feet and adding language that clarifies the requirement to submit a Forest Conservation Plan immediately after geotechnical testing. This change is consistent with other sections of the FRO that limit forest clearing activities to 20,000 square feet prior to submitting a Forest Conservation Plan.

I-21-40(B): Conservation and Forestation Priorities
Changes to this Code section are limited to changing the ratio for utilizing existing off-site forest from 2:1 to 2.5:1 and adding language that restricts the placement of a FRO easement over land that is already encumbered by a land preservation easement.

Under the current law, when existing off-site forest is used to meet a FRO mitigation requirement, the developer must place 2 acres of forest in easement for each acre of mitigation that is owed. This 2:1 ratio is the state’s minimum requirement. Under the proposed 2.5:1 ratio, 2.5 acres of existing off-site forest is required for each acre of mitigation that is owed. This 2.5:1 mitigation ratio was established by the County in 2001 and was reduced to the current 2:1 ratio in 2011 by Ordinance 11-19-585. This change is consistent with the proposed change to Section 1-21-29 (Forest Banking Program). Increasing the ratio by 0.5 will increase the conservation of existing forest with very minimal additional cost to development projects. Land used for off-site mitigation
is typically owned by the developer and the costs associated with placing 2.50 acres of forest under easement versus 2.0 acres are negligible. Areas of off-site forest used for mitigation are generally stream valleys, wetlands, and floodplains that are of little benefit except for environmental mitigation purposes.

Language has been added to this section which restricts FRO easements from being placed over existing land preservation easements. Property that is under existing land preservation easements are already significantly protected, are most often protected through use of government funds, and have covenants that conflict with the FRO covenants. Most land preservation programs already prohibit overlap with other easements. This language is consistent with current practices.

I-21-41: Afforestation and Afforestation Threshold
Afforestation is the establishment of forest cover on an area that is not presently in forest cover. Development sites that have no or very little existing forest are still required to meet certain afforestation requirements, based on the established afforestation thresholds for the particular use or zoning district.

The 2007 FRO Ordinance created a uniform afforestation threshold of 20% for all uses and zoning districts. Prior to this ordinance the threshold varied:

20% for Agricultural, Resource Conservation, and R1 Residential.
15% for Institutional, R3 through R16, Mixed Use and Planned Developments, Commercial and Industrial.

The 2011 FRO Ordinance reversed the uniform 20% afforestation threshold and reinstated the variable 15%-20% threshold.

Under the current 15% threshold, a development project consisting of 50 acres of unforested land would have a 7.50 acre afforestation requirement, meaning 7.50 acres of forest would be planted onsite or would be mitigated offsite. Under the proposed 20% threshold the same development project would have a 10 acre afforestation requirement, which is a 0.05 acre increase per developed acre. With a 20% threshold, a 50 acre parcel zoned R3 with 75 residential lots would incur an additional cost of approximately $300 per lot.

Since FY12, 413 acres of unforested land has been subject to the 15% afforestation threshold, generating 62 acres of mitigation. Under a uniform 20% threshold, 81 acres of mitigation would have been generated. The 20% threshold would have generated 21 acres of new forest planting or preserved an additional 42 acres of existing forest. The additional 21 acres of mitigation spread out over the 413 acres of developed land again equates to 0.05 acres of additional mitigation per acre of developed area.

Increasing the threshold by 5% for Institutional, R3 through R16, Mixed Use and Planned Developments, Commercial, and Industrial zones/uses will have many benefits while adding minimal cost to development projects;
• Increase the amount of new forest being planted in the County, helping offset the loss of existing forest that is cleared for development (see discussion under 1-21-42 below).

• Increase the sale of forest banking credits, helping existing forest bank owners with the return on their investment and encourage more property owners to enter into the Forest Banking Program, which will in turn result in more forest conservation and forest planting.

• The uniform 20% threshold is equitable to all property owners, regardless of the zoning of their property.

1-21-42: Reforestation and Conservation Threshold
The purpose of revising this section of the Code is to restore the 2007 provision that required, at a minimum, a 1:1 replacement for all forest that is cleared for a development project.

Reforestation is the planting of trees to replace forest that has been or is proposed to be removed. Before the adoption of the 2007 FRO Ordinance, the County used the State’s formula for determining how much forest could be cleared without penalty (known as the “breakeven point”), and how much reforestation would be required for clearing above the “breakeven point”. In some cases a certain amount of forest could be cleared and if the remaining forest is placed under a FRO easement then no additional mitigation was required. The conservation threshold varied depending on the proposed land use and zoning district:

- 50% for Agricultural and Resource Conservation
- 25% for R1 Residential
- 20% for Institutional, R3 through R16
- 15% for Mixed Use, Planned Developments, Commercial, and Industrial

The 2007 FRO Ordinance established a 1:1 replacement requirement for all forest that was cleared, which was in addition to the standard State method for calculating forest conservation and reforestation requirements. Under the 2007 provision, even if the “standard method” allowed a certain amount of forest to be cleared without penalty, the amount of forest that was cleared would have to be replaced, either by planting new forest on site or by utilizing one of the methods for mitigation offsite (such as using forest banking credits). However, in a case where the “standard method” generated a mitigation requirement greater than a 1:1 replacement, then the “standard method” would apply. The 1:1 provision was removed from the Code in 2011.

Under the “standard method”, a 300 acre property zoned Mixed Use, PUD, Commercial, or Industrial has a 15% forest conservation threshold. If the 300 acre property contained 150 acres of forest, then up to 84 acres of forest could be cleared without triggering a reforestation requirement. Under the proposed 1:1 replacement provision, mitigation for the 84 acres of cleared forest would be required.

The current regulations encourage development projects to claim the maximum amount of forest clearing allowed without penalty, preserving only the amount of existing forest necessary to “break even”. Without having a mitigation requirement for clearing forest, there is little incentive to
explore alternative site designs that would reduce forest clearing while allowing the development to move forward.

Carroll County currently requires a 1:1 replacement of all forest cleared for development except in the Agricultural Zone, where a 2:1 replacement is required for clearing over 25,000 square feet of forest.

The significant loss of forest that is permitted under the current regulations is extremely difficult to replace, even with the afforestation requirements that are generated by development projects that do not contain forest. Between 1992 and 2016, 2,363 acres of forest has been cleared, while only 1,309 acres of new forest has been planted. This net loss of forest will continue to increase under the current regulations. Only by restoring the 1:1 replacement provision can the County curb the significant loss of forest. The 1:1 provision will encourage more thoughtful planning and design of developments, potentially avoiding unnecessary forest clearing in order to reduce the amount of mitigation that is required.

1-21-44: Miscellaneous Credits
The only change to this section is a reduction in the amount of credit that may be used to meet an afforestation requirement from 100% to 25%.

Miscellaneous credits are trees and shrubs planted outside of a forest setting that may be used to meet FRO mitigation requirements. This includes street trees and plantings within stormwater management ponds and rain gardens. Areas utilized for miscellaneous credit are not protected by a FRO easement.

Prior to the adoption of the 2011 FRO Ordinance, only 25% of an afforestation requirement could be met by using miscellaneous credit. If someone owed 3 acres of mitigation, only 0.75 acres could be mitigated by planting street trees and stormwater ponds. The remaining 2.25 acres would need to be provided in the form of forest, either by planting new forest on site, purchasing banking credits, or by providing an offsite forest easement.

Restoring the pre-2011 regulation will result in more forest being planted/preserved and help reduce the net loss of forest the County has experienced over the past two decades (as discussed above under 1-21-42: Reforestation and Conservation Threshold), while still allowing a portion of the planting requirement to be met with street trees and stormwater management ponds and rain gardens.

9/6/17 update:
On August 30, 2017, Staff presented the proposed FRO bill at a Developer Outreach Meeting. One of the concerns raised at this meeting was the impact this legislation will have on development in growth areas and that such legislation will encourage sprawl into the County’s rural areas. Staff does not believe this legislation will cause sprawl. Land within growth areas are zoned for a much higher density than our rural areas. This density simply cannot be shifted into our rural Agricultural and Resource Conservation zones. Further, the proposed changes to the current law will apply to all zoning districts and all uses. Developing areas outside of a growth area will not
reduce the FRO mitigation requirements and will not make developing outside of a growth area more attractive. It was suggested at the meeting that land within growth areas be exempt from the 1:1 replacement provision. The largest largest loss of forest comes from large developments that are within growth areas. Rural areas (AG and RC zoning districts) already have a much higher conservation threshold than other zoning districts (50% versus 15-25%), lot sizes are larger, and mass grading is not required. To exclude developments within growth areas from the 1:1 replacement provision will continue to place the burden of forest conservation on property owners within rural areas who are most often creating fewer than 5 residential lots. Further, this exemption will not significantly decrease the amount of forest cover that is lost in the County each year (an average of 75 acres of forest is lost to development each year in Frederick County).

It was also noted at the Developer Outreach Meeting that the financial impact of the proposed legislation is unclear. This same legislation was in place between July 2007 and August 2011, when we were under an economic recession and development slowed down. Between FY08-FY10, 1,445 lots were recorded (average of 553/year) and 1,347 residential building permits were issued (average of 449/year). Development projects during this timeframe cleared 414 acres of forest. Even with the economic downturn a fair number of lots and permits were processed resulting in an average of 138 acres of forest clearing per year.

A 300 acre site clearing 84 acres of forest (a very extreme example) would generate 84 acres of mitigation, which could be provided by planting new forest on site, planting or preserving existing forest off-site, by purchasing forest banking credits, or by a combination of these methods. Planting 84 acres of forest would cost approximately $462,000, or $1,540 per gross acre of development. If 1000 lots/units were created from the 300 acre development site (assuming PUD density of 3.3 units/acre) the cost would be $462 per lot. The purchase of forest banking credits for the same 84 acres of mitigation would cost approximately $756,000, or $756 per lot/unit.

Attendees of the Developer Outreach Meeting also asked about grandfathering provisions. As with most changes in law, the draft bill grandfather Forest Resource Ordinance applications received prior to the effective date of this change in law. Applications received prior to the effective date will be reviewed under the current FRO regulations. Only new applications that are received on or after the effective date of this ordinance will be subject to the new regulations. Development projects with an active DRRA are also exempt from the change in law.

10/11/17 update:

Several minor changes have been made to the draft bill since the September 12, 2017 County Council Workshop.

- A revision to the existing definition of “Technical Manual” is now included in the bill to address a comment from the Department of Natural Resources. This administrative change allows the County to supplement the State Technical Manual to implement the changes proposed to the FRO under this bill (see Exhibit 1, page 1)

- The revised definition of “Worksheet” as included in the original draft bill has been
rewored to address a comment from the Department of Natural Resources. (see Exhibit 1, page 1)

- The word “utility” has been added to the proposed amendment to Section 1-21-40(G)(3) (see Exhibit 1, pages 4-5).

- The wording of Section 1-21-42 (B)(1&2), (C), and (D) has been slightly altered at the request of the County Attorney’s Office. The rewording of parts of these section do not change the meaning or applicability of this section as presented to the County Council at the September 12, 2017 workshop. (see Exhibit 1, pages 5-6)

RECOMMENDATION:
That the Planning Commission provide a recommendation to the Frederick County Council regarding Bill #17-17, Revisions to the County Forest Resource Ordinance.

<table>
<thead>
<tr>
<th>CODE SECTION/ISSUE</th>
<th>DISCUSSION</th>
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| 1-21-5: DEFINITIONS | • "DEPARTMENT": UPDATE DIVISION NAME.
• "DEVELOPMENT PROJECT": REVISED DEFINITION TO MATCH LANGUAGE UNDER 1-21-6.
• "REGULATED ACTIVITY": REMOVED 40,000 SQ FT. PROVISION TO MATCH CRITERIA UNDER 1-21-6
• "WORKSHEET": ADD "IN ACCORDANCE WITH THIS CHAPTER" FOR ADMINISTRATIVE PURPOSES. (updated from original draft ordinance 10/11/17)
• "TECHNICAL MANUAL": REVISED DEFINITION IN ACCORDANCE WITH COMMENTS FROM DEPT. OF NATURAL RESOURCES. (updated from original draft ordinance 10/11/17) |
| 1-21-6: APPLICABILITY AND GENERAL REQUIREMENTS | • DIVIDE (A) INTO TWO SEPARATE LINES (A AND B) FOR CLARITY.
• ADD CRITERIA TO BE CONSISTENT WITH 1-21-7(F) (DEVELOPMENT OF EXISTING SINGLE FAMILY LOTS) |
<p>| 1-21-10(9)(2): PROTECTIVE AGREEMENTS | • CHANGE &quot;BOCC&quot; TO FREDERICK COUNTY |
| 1-21-20: ADMINISTRATIVE AGENCIES | • UPDATE DIVISION NAME |
| 1-21-24: FEE-IN-LIEU PROGRAM | • ADD BUILDING PERMITS TO TIMING OF PAYMENT, CONSISTANT WITH TIMING OF OTHER FORMS OF MITIGATION (PURCHASE OF BANKING CREDITS, RECORDATION OF EASEMENTS) PER 1-21-34(A)(2) AND AS PRACTICED FOR 20+ YEARS. |</p>
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<td><strong>6</strong></td>
<td><strong>1-21-29: FOREST BANKING PROGRAM</strong></td>
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<td>• CHANGE THE MITIGATION RATIO OF EXISTING FOREST FROM 2:1 TO 2.5:1</td>
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<td>• INCREASES CONSERVATION OF EXISTING FOREST</td>
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<td><strong>7</strong></td>
<td><strong>1-21-31: FOREST STAND DELINEATION; GEOTECHNICAL TESTING</strong></td>
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<td>• REDUCE CLEARING LIMITS TO 20,000 SQFT IN ORDER TO PREVENT EXCESSIVE FOREST CLEARING PRIOR TO THE SUBMISSION OF A FOREST CONSERVATION PLAN.</td>
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<td>• CLARIFY THE REQUIREMENT TO SUBMIT A FOREST CONSERVATION PLAN FOLLOWING GEOTECHNICAL TESTING.</td>
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<td><strong>1-21-32: PRELIMINARY FOREST CONSERVATION PLAN</strong></td>
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<td>• CHANGE PLAN TYPE TO MATCH ZONING ORDINANCE</td>
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<td><strong>9</strong></td>
<td><strong>1-21-40 (B): CONSERVATION AND FORESTATION PRIORITIES</strong></td>
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<td>• CHANGE THE MITIGATION RATIO FOR OFF-SITE EXISTING FOREST FROM 2:1 TO 2.5:1, RESTORING PRE-2011 LANGUAGE, CONSISTANT WITH PROPOSED CHANGES TO 1-21-29</td>
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<td>• RESTORES PRE-2011 LANGUAGE, UNDER WHICH MANY PROPERTY OWNERS ENTERED INTO THE FOREST BANKING PROGRAM. THE 2:1 RATIO HAS SLOWED BANKING CREDIT SALES.</td>
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<td>• RESTRICT FRO EASEMENTS FROM BEING PLACED OVER EXISTING LAND PRESERVATION EASEMENTS, WHICH ARE ALREADY SIGNIFICANTLY PROTECTED (MOST OFTEN THROUGH USE OF GOVERNMENT FUNDS) AND THAT MAY HAVE COVENANTS THAT CONFLICT WITH THE PRO COVENANTS. MOST PRESERVATION PROGRAMS ALREADY PROHIBIT FRO FROM OVERLAP. RESTRICTS FRO EASEMENTS FROM BEING PLACED OVER UTILITY EASEMENTS, WHICH HAS BEEN STANDARD PRACTICE FOR 20+ YEARS. (updated from original draft ordinance 10/11/17)</td>
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<td><strong>10</strong></td>
<td><strong>1-21-41: AFFORESTATION AND AFFORESTATION THRESHOLD</strong></td>
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<td>• RETURN TO THE UNIFORM 20% AFFORESTATION THRESHOLD ESTABLISHED PRIOR TO THE PRE-2011 CODE. WILL RESULT IN A UNIFORM FOREST PLANTING REQUIREMENT REGARDLESS OF THE ZONING DESIGNATION OF THE PROPERTY AND WILL INCREASE FOREST ACREAGE IN THE COUNTY. THIS WILL INCREASE THE AFFORESTATION RATE BY 3% FOR THE FOLLOWING ZONING DISTRICTS: INSTITUTIONAL, R3 THROUGH R16, MIXED USE AND PLANNED DEVELOPMENTS, COMMERCIAL AND INDUSTRIAL.</td>
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<td><strong>11</strong></td>
<td><strong>1-21-42: Reforestation and Conservation Threshold</strong></td>
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<td>• RESTORES THE MINIMUM 1:1 REPLACEMENT REQUIREMENT FOR CLEARED FOREST (THE 1:1 PROVISION WAS ESTABLISHED PRIOR TO THE 2011 CODE AMENDMENT).</td>
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<td>• THIS WILL REDUCE FOREST CLEARING AND REQUIRE REPLACEMENT MITIGATION FOR AREAS THAT ARE CLEARED.</td>
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<td><strong>12</strong></td>
<td><strong>1-21-44: MISCELLANEOUS CREDITS</strong></td>
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<td>• REDUCE AMOUNT OF MISCELLANEOUS CREDITS THAT MAY BE USED TO MEET AFFORESTATION REQUIREMENT FROM 100% TO 25%. THIS WILL RESTORE THE PRE-2011 CODE LANGUAGE.</td>
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<td>• THIS CHANGE WILL RESULT IN MORE FOREST BEING PLANTED/PRESERVED VERSUS ALLOWING STREET TREES AND OTHER NON-FOREST PLANTINGS TO MITIGATE ALL OF A PROJECTS FOREST MITIGATION REQUIREMENT.</td>
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AN ACT to: Amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to revise the forest planting, retention, and mitigation requirements.
The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to increase forest conservation efforts, update definitions and agency names, and add clarifying language to various sections of the Code.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

AND BE IT FURTHER ENACTED that the following transitional provisions shall apply:

(1) The amendments and revisions to Chapter 1-21 enacted by this Bill shall apply to:

(a) Any Forest Stand Delineation, Preliminary Forest Conservation Plan, Final Forest Conservation Plan, or any combination thereof, and any exemption application, received by the Department for approval, reapproval, or extension on or after the effective date of this Bill.

(b) Any revised Forest Stand Delineation, Preliminary Forest Conservation Plan, Final Forest Conservation Plan, or any combination thereof, and any exemption application, received by the Department for approval, reapproval, or extension on or after the effective date of this Bill.

Harold F. (Bud) Otis, President
County Council of Frederick County,
Maryland
CHAPTER 1-21 FOREST RESOURCES

§ 1-21-5. DEFINITIONS.

*****

DEPARTMENT. The Frederick County [Community Development] Division OF PLANNING AND PERMITTING, AND ANY SUCCESSOR TO THIS DIVISION.

DEVELOPMENT PROJECT.

(1) Any subdivision [that is 40,000 square feet or greater], including agricultural-zoned remainders of less than 25 acres; or

(2) When no subdivision is proposed, the area of grading and construction activities occurring on 1 or more contiguous tracts under the ownership or control of the same person, that together comprise 40,000 square feet or greater, or a site plan having a net tract area 40,000 square feet or greater, OR A SITE PLAN THAT GENERATES A FOREST MITIGATION REQUIREMENT OF 250 SQUARE FEET OR GREATER.

*****

REGULATED ACTIVITY. Any of the following activities[5, when that activity occurs on a unit of land that is 40,000 square feet or greater]:

(1) Subdivision;

(2) Site plan development;

(3) Grading;

(4) An activity that requires a sediment and erosion control permit; or

(5) Project plan of a local agency.

*****

TECHNICAL MANUAL. The State Forest Conservation Technical Manual, Third Addition, 1997, as it may be amended[5], AND OTHER SPECIFICATIONS AND STANDARDS OF PERFORMANCE AS PROVIDED IN THIS CHAPTER AND IN SUPPORTING DOCUMENTS ISSUED BY THE DEPARTMENT.

*****

WORKSHEET. The official set of data calculated to the nearest one-hundredth acre, defining the size of the net tract area together with the required forest calculations prepared IN ACCORDANCE WITH THIS CHAPTER [on the worksheet published in the TECHNICAL MANUAL].

§ 1-21-6. APPLICABILITY AND GENERAL REQUIREMENTS.
Except as provided in § 1-21-7, this chapter applies to property for which an application is being made for:

(A) A subdivision; [or]

(B) [strike] A grading or sediment and erosion control permit for an area comprising 40,000 square feet or greater;

([B]-[C]) A public utility development project not exempt under § 1-21-7 that clears 40,000 square feet or more of forest;

([C] D) A site plan development project with a net tract area 40,000 square feet or greater;

([D] E) A site plan development project with a net tract area less than 40,000 square feet that generates a forest mitigation requirement of 250 square feet or greater; OR

(F) CONSTRUCTION OF A SINGLE-FAMILY HOUSE ON A SINGLE LOT OF RECORD AS OF DECEMBER 31, 1992, IF THE ACTIVITY RESULTS IN THE CLEARING OR GRADING OF 20,000 SQUARE FEET OR GREATER OF FOREST.

****

§ 1-21-10. PROTECTIVE AGREEMENTS.

[Subsection 1-21-10(A) remains unchanged]

(B) Long term protective agreements.

(1) For all forest shown as “retention” in order to satisfy conservation requirements described in § 1-21-40, and for all planting areas shown as forestation in order to satisfy either § 1-21-41 (afforestation) or § 1-21-42 (reforestation), an applicant shall be required to subject these areas to a perpetual forest deed of easement, otherwise known as “Forest Resource Deed of Easement/Maintenance Covenants and Agreement.”

(2) The grantee shall be the [Board of County Commissioners of] Frederick County, MARYLAND, or in the case of incorporated towns, a municipal governing body, as determined by the respective town.

(3) The areas of forest subject to deed protection shall be described by a graphic metes and bounds by a licensed Maryland surveyor.

(4) The deed shall include use restrictions prepared by the Department, known as “Forest Resource Inspection and Maintenance Covenants and Agreement.”

(5) The deed shall comply with COMAR 08.19.05.02.

(6) A title opinion letter shall accompany submission of the deed of easement described in subsection (B)(1) of this section.

****

§ 1-21-20. ADMINISTRATIVE AGENCIES DESIGNATED.

Underlining and/or CAPITALS indicates matter added to existing law.
Single brackets and strikethrough indicate matter deleted from existing law.
*** indicates existing law unaffected by bill.

Bill No. 17-17
(A) [Community Development] Division OF PLANNING AND PERMITTING
("Department").

(1) The review of all required plan submissions shall be administered by the Frederick County [Community Development] Division OF PLANNING AND PERMITTING
("Department").

[Subsections 1-21-20(A)(2) through 1-21-20 (D) remain unchanged]

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§ 1-21-24. FEE-IN-LIEU PROGRAM.

[Subsections 1-21-24(A) and (B) remain unchanged]

(C) Timing of payment. Money contributed in lieu of forestation under this section shall be paid prior to the release of BUILDING, grading, or sediment and erosion control permits, or prior to recordation of subdivision plats, whichever is earlier.

[Subsection 1-21-24(D) remains unchanged]

*****

§ 1-21-29. FOREST BANKING PROGRAM.

[Subsections 1-21-29(A) and (B)(1-3) remain unchanged]

(4) For all AREAS COVERED UNDER subsection (B)(3), the first 50 acres shall be credited at a 1:2.5 ratio, as described in subsection (E) of this section. For all areas that exceed 50 acres, the mitigation ratio shall be 1:4, meaning that for every 1 acre of required forestation, 4 acres of off-site, existing forest must be protected and conserved. In no case shall the total acres of such an application exceed 200 acres.

[Subsections 1-21-29(B)(5) through 1-21-29(D) remains unchanged]

(E) Credit ratios. Forest bank transfers of:

(1) “Existing forest” shall be credited at a 1:2.5 ratio, meaning that for every 1 acre of required forestation, 2.5 acres of existing forest must be acquired;

[Subsections 1-21-29(E)(2) through 1-21-29(F) remain unchanged]

*****

§ 1-21-31. FOREST STAND DELINEATION.

[Subsection 1-21-31(A)(1-2b) remains unchanged]

(c) Geotechnical testing. An applicant may perform geotechnical testing with a partial FSD showing the existing forest canopy line and other environmental features required by the Frederick County Subdivision Ordinance (Chapter 1-16) or Zoning Ordinance (Chapter 1-19), provided that the applicant shall:

1. Protect all historic, champion, and specimen trees; habitats for threatened and endangered species; and hydrologically-sensitive areas during the testing process;

Underlining and/or CAPITALS indicates matter added to existing law.
[Single brackets] and strikethrough indicate matter deleted from existing law.
*** indicates existing law unaffected by bill.
Bill No. 17-17
2. Not remove [40,000]20,000 square feet or greater of forest;

3. Before proceeding beyond testing, submit normal FSD information that includes forest canopy conditions as they were prior to removal for testing; AND

4. SUBMIT A FOREST CONSERVATION PLAN AND PROVIDE MITIGATION FOR THE FOREST REMOVAL ACTIVITY.

[The balance of Subsection 1-21-31 remains unchanged]

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§ 1-21-33. PRELIMINARY FOREST CONSERVATION PLAN.

[Subsections 1-21-33(A) and (B) remain unchanged]

(C) Review period. The PFCP shall be reviewed concurrently by the Department with the review of a Phase II Concept Plan for a PUD or MXD; a residential cluster or co-housing plan; preliminary subdivision plan or site plan; or grading or sediment and erosion control permit, whichever is applicable.

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§ 1-21-40. CONSERVATION AND FORESTATION PRIORITIES.

[Subsections 1-21-40(A) through (C) remain unchanged]

(D) Priority sequence for forestation or mitigation off-site. After every reasonable effort has been made to minimize the clearing of trees and other woody plants in on-site priority areas listed in § 1-21-40(B), and after every reasonable effort has been made to afforest or reforest priority areas listed in § 1-21-40(C), the following shall be considered the priority sequence for forestation or mitigation off-site:

1. Purchase of credits through the Frederick County Forest Banking Program;

2. Forestation of hydrologically-sensitive areas, preferably in agriculturally zoned or used land;

3. Protection of existing off-site forest at a 1:[2]2.5 ratio, as provided in subsection (G) of this section, in areas closely associated with streams, wetlands, or floodplains, preferably in agriculturally zoned or used land, when such land is not already substantially protected by the Zoning Ordinance or other long-term protective instruments in perpetuity; and

4. Payment into the fee-in-lieu program.

[Subsections 1-21-40(E) and (F) remain unchanged]

(G) Off-site existing forest mitigation. When off-site existing forest is used to mitigate forestation requirements, the applicant must mitigate at a 1:[2]2.5 ratio, meaning that for every 1 acre of required forestation, [2-]2.5 acres of off-site existing forest must be protected and conserved.

(H) Easement restrictions. No FRO easements (long-term protection) shall be allowed:

1. Over septic areas or wells; [or]

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[Single brackets] and strikethrough indicate matter deleted from existing law.
*** - indicates existing law unaffected by bill.

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(2) On lots less than 40,000 square feet. However, forest in these areas may be protected as "tree save area," as provided in § 1-21-44[.]; OR

(3) OVER EXISTING PRESERVATION OR UTILITY EASEMENTS.

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§ 1-21-41. AFFORESTATION AND AFFORESTATION THRESHOLD.

[Subsections 1-21-41(A) through (C) remain unchanged]

(D) Afforestation requirements. [Afforestation on a tract or development project shall be in accordance with the following requirements:

(1) A tract or development project having less than 20% of the net tract area in forest cover shall be afforested to at least 20% of the net tract area for the following zoning categories:

(a) Agriculture;
(b) Resource conservation; and
(c) R-1 residential.

(2) A tract or development project having less than 15% of the net tract area in forest cover shall be afforested to at least 15% of the net tract area for the following zoning categories:

(a) Institutional uses in any zone;
(b) R-3, R-5, R-8, R-12, R-16 residential zones and mobile home parks;
(c) Mixed Use and Planned Development zones; and
(d) Commercial and Industrial Use zones.]

[Subsection 1-21-41(E) remains unchanged]

§ 1-21-42. REFORESTATION AND CONSERVATION THRESHOLD.

[Subsection 1-21-42(A) remains unchanged]

(B) CALCULATION OF REQUIREMENTS. THERE ARE TWO METHODS TO CALCULATE REFORESTATION REQUIREMENTS. THE METHOD THAT RESULTS IN THE MOST REFORESTATION SHALL BE USED.

(1) THE FIRST METHOD SHALL REQUIRE A 1:1 REPLACEMENT, FOR EVERY ONE ACRE (OR PORTION THEREOF) OF FOREST REMOVED, ONE ACRE MUST BE PLANTED.

(2) THE SECOND METHOD, THE "STANDARD METHOD", IS SET FORTH IN SUBSECTION 1-21-42(D).

(B-IC) Definitions restated. REFORESTATION under this section means the planting of trees to replace forest that has been recently or is proposed to be removed by development. CONSERVATION THRESHOLD means the percentage of the net tract area at which the

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reforestation requirement changes from a ratio of one-quarter acre planted for every 1 acre removed to a ratio of 2 acres planted for every 1 acre removed according to the land use categories as listed below:

<table>
<thead>
<tr>
<th>Category of Use</th>
<th>Threshold Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Agricultural and Resource Conservation Zones, except for cluster developments therein which shall utilize R-1 values</td>
<td>50</td>
</tr>
<tr>
<td>(2) R-1 Residential zoned areas</td>
<td>25</td>
</tr>
<tr>
<td>(3) Institutional use areas in any zone</td>
<td>20</td>
</tr>
<tr>
<td>(4) R-3, R-5, R-8, R-12, R-16 and Mobile Home Park zoned areas</td>
<td>20</td>
</tr>
<tr>
<td>(5) Mixed Use and Planned Unit Development zoned areas</td>
<td>15</td>
</tr>
<tr>
<td>(6) Commercial and Industrial Use zoned areas</td>
<td>15</td>
</tr>
</tbody>
</table>

Required reforestation under the Standard Method shall be calculated according to the formulas provided in subsection ([C]D) of this section.

([C]D) **STANDARD METHOD Calculations.**

(1) For all existing forest cover cleared on the net tract area above the applicable conservation threshold established by subsection ([A]C) of this section, the area of forest removed shall be reforested at a ratio of one quarter acre planted for every acre removed.

(2) For all existing forest cover cleared on the net tract area below the applicable conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed.

(3) For each acre of forest retained on the net tract area above the applicable conservation threshold, credit shall be given against the total number of acres required to be reforested under subsection ([C]D)(1) of this section.

([D]E) **Accuracy Standards.** All calculations of reforestation requirements shall be calculated to the nearest one-hundredth acre and shall be in accordance with the worksheet provided in the Technical Manual and approved by the Department. However, forest field measurements may be measured to the nearest one-tenth acre.

§ 1-21-44. MISCELLANEOUS CREDITS.
(E) Limitations in the use of miscellaneous credits. Miscellaneous credits used in a development project shall not account for more than 25% of the total reforestation requirement of a tract or development project. Miscellaneous credits may be used to meet up to [400]25% of any afforestation requirement, subject to meeting the requirements of (A) through (D) above.