

**THE EFFECTIVE DATE OF THIS ORDINANCE IS OCTOBER 1, 2009**

**ORDINANCE NO. 09-26-530**

**AMENDMENTS TO THE FREDERICK COUNTY FOREST RESOURCE ORDINANCE**

The Frederick County Board of County Commissioners (“BOCC”) desires to adopt certain changes to the Forest Resource Ordinance – Chapter 1-21 of the Frederick County Code (FRO).

**BACKGROUND**

On May 7, 2009, Governor Martin O’Malley signed into law Senate Bill 666, titled “No Net Loss of Forestry Policy-Forest Conservation Act”. This Bill was passed during the 2009 Legislative Session and designated as Chapter 298 of the Laws of Maryland 2009. Senate Bill 666 requires certain changes to local forest conservation ordinances, including, but not limited to:

- Lowering the exemption threshold for activity conducted on a single lot of record or linear project from 40,000 square feet to 20,000 square feet.
- Amending the intrafamily exemption by eliminating grandchild and lowers the threshold of activity from 40,000 square feet to 20,000 square feet.
- Removing exemption for areas “previously developed and covered by paved surface”.
- Separating the current priority retention areas into two separate categories with different levels of protection.
- Modifying the acceptable uses for fee-in-lieu to include maintenance of existing forest areas and achieving urban canopy goals.

On August 20, 2009, the BOCC voted to initiate the public hearing process for this Ordinance. On September 9, 2009, the Frederick County Planning Commission held a public hearing on this Ordinance and voted to recommend approval. On September 29, 2009, the

BOCC held a duly advertised public hearing to discuss and hear public comment on this Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND, that the Forest Resource Ordinance - Chapter 1-21 of the Frederick County Code - is hereby amended as follows:

**§ 1-21-7. EXEMPTIONS.**

**[Note: §§1-21-7 (A) through (E) remain unchanged]**

(F) Construction of a single-family house on a single lot of record as of December 31, 1992, of any size, if the activity:

- (1) Does not result in the clearing or grading of ~~40,000~~ 20,000 square feet or greater of forest;
- (2) Does not result in the clearing or grading of a forest that is subject to the requirements of a previous forest conservation plan prepared under this chapter;
- (3) Is the subject of a declaration of intent approved by the Department; provided however, if the lot has less than ~~40,000~~ 20,000 square feet of forest, then the declaration of intent is not required; and
- (4) Is not being done pursuant to a site plan or subdivision plat;

**[Note: §§1-21-7 (G) through (H) remain unchanged]**

(I) Activities required for the purpose of constructing a dwelling unit intended for the use of the owner; or a child~~or grandchild~~ of the owner, in any zoning district if the activity:

- (1) Does not result in the clearing or grading of more than ~~40,000~~ 20,000 square feet of forest; and
- (2) Is the subject of a declaration of intent approved by the Department;

**[Note: §§1-21-7 (J) through (K) remain unchanged]**

\* \* \*

§ 1-21-24. FEE-IN-LIEU PROGRAM.

[Note: §§1-21-24 (A) through (C) remain unchanged]

(D) *Expenditure of fees.*

(1) The county shall expend or encumber the fee-in-lieu money within 3 growing seasons after receipt of the money. ~~Funds shall be used for documented tree planting or purchase of forest banking program credits.~~

(2) Money contributed under this section:

(a) May be used for forestation, including site identification, acquisition, preparation, and maintenance; **FOR MAINTENANCE OF EXISTING FORESTS [THAT ARE PROTECTED BY A LONG TERM PROTECTIVE AGREEMENT AS DEFINED IN THIS CHAPTER]; AND FOR ACHIEVING URBAN CANOPY GOALS;**

(b) Shall be deposited in a separate fee-in-lieu account; and

(c) Shall not revert to the General Fund and shall not be used to administer the forest banking program, but may be used to purchase forest banking credits.

(3) Sites for forestation using fee-in-lieu money will be sought in the county and watershed in which the original project is located. If this cannot be reasonably achieved, the monies may be used to accomplish forestation anywhere in the county or the state or to buy forest banking credits.

\* \* \*

§ 1-21-32. FOREST CONSERVATION PLANS IN GENERAL.

(A) *Conservation priority.* In developing a forest conservation plan, the applicant shall follow the forest retention and forestation priorities as provided in § 1-21-40.

(B) *Demonstration of compliance with forest priorities.* If existing on-site forest is not proposed to be retained, the applicant shall demonstrate to the satisfaction of the Department:

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

(2) Why the priority areas specified in § 1-21-40(B) and in Md. Code Ann., Natural Resources Article, § 5-1607(c)(2) cannot be left in an undisturbed condition, **INCLUDING**;

~~(3)~~ **(a)** ~~If priority areas cannot be left undisturbed, h~~**How** the sequence for forestation will be followed in compliance with Md. Code Ann., Natural Resources Article, § 5-1607; and

(4) **(b)** Where on the tract or development project priority area forestation will occur in compliance with Md. Code Ann., Natural Resources Article, § 5-1607.

**(3) HOW THE DISTURBANCE TO THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN § 1-21-40(B) AND IN MD CODE ANN., NATURAL RESOURCES ARTICLE, § 5-1607(C)(1) QUALIFIES FOR A MODIFICATION.**

**[Note: §§1-21-32 (C) through (D) remain unchanged]**

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

**[Note: §§1-21-40 (A) remains unchanged]**

**(B) *Priority areas for on-site conservation.***

(1) Trees, shrubs, and plants in priority areas shall be retained and protected and shall be left in an undisturbed condition. The applicant must demonstrate to the satisfaction of the Department that reasonable efforts have been made to protect them **AND THAT THE PLAN CANNOT REASONABLY BE ALTERED**. Priority areas include:

(a) Hydrologically-sensitive areas, including the 100 year floodplain and all other floodplains listed in the Zoning Ordinance, § 1-19-9.100, as amended; streams and their buffers; steep slopes (25%) contiguous to or within 50 feet of hydrologically- sensitive areas; and wetlands;

(b) Forest segments that connect large forested or heavily vegetated tracts of land within or adjacent to the site;

(c) Areas that contain trees, shrubs, or plants identified as rare, threatened, or endangered by the United States Fish and Wildlife Service or the Department of Natural Resources **UNDER THE FEDERAL ENDANGERED SPECIES ACT OF 1973 IN 16 U.S.C. §§ 1531-1544 AND IN 50 CFR 17, OR UNDER COMAR 08.08.08; and**

(d) Critical habitat areas for sedentary animal species; identified as threatened, endangered or in-need-of-conservation under the Maryland Nongame and Endangered Species Conservation Act, Md. Code Ann., Natural Resources Article, §§ 10-2A-01 through 10-2A-09; **AND**

**(e) NONHAZARDOUS TREES THAT:**

- 1. ARE PART OF A HISTORIC SITE;**
- 2. ARE ASSOCIATED WITH A HISTORIC STRUCTURE;**

Additions are shown in **bold** and ALL CAPS or underlined; deletions are shown as ~~strike-through~~.

3. **HAVE BEEN DESIGNATED BY THE STATE OR THE DEPARTMENT AS A NATIONAL, STATE, COUNTY, OR MUNICIPAL CHAMPION TREE; AND**

4. **ARE SPECIMEN TREES, OR ARE 75 PERCENT OR MORE OF THE DIAMETER, MEASURED AT 4.5 FEET ABOVE THE GROUND, OF THE CURRENT STATE CHAMPION TREE OF THAT SPECIES AS DESIGNATED BY THE DEPARTMENT OF NATURAL RESOURCES.**

(2) Any of the priority areas listed in subsection(B)(1) of this section that are not retained shall be deemed a modification requiring approval under § 1-21-21 of this chapter, unless the exception is authorized by § 1-19-9.110, as amended, of the Zoning Ordinance.

(3) The following trees or forested areas shall be retained and protected 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:

~~\_\_\_\_\_ (a) Nonhazardous trees that:~~

~~\_\_\_\_\_ 1. Are part of a historic site;~~

~~\_\_\_\_\_ 2. Are associated with a historic structure;~~

~~\_\_\_\_\_ 3. Have been designated by the state or the Department as a national, state, county, or municipal champion tree; and~~

~~\_\_\_\_\_ 4. Are specimen trees.~~

~~(b)~~ **(a)** Forest areas that buffer significantly noncompatible land uses, such as industrial and residential, as determined by the Department; and

~~(e)~~ **(b)** Other forested areas that because of their size, location, species composition, or quality are deemed by the Department as being worthy of conserving permanently.

**[Note: §§1-21-40 (C) through (H) remain unchanged]**

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

**[Note: §§1-21-41 (A) through (B) remain unchanged]**

(C) *Exceptions.* Afforestation requirements shall not apply to the following.

(1) Utility and linear projects that involve no change in land use.

(2) Those portions of:

Additions are shown in **bold** and ALL CAPS or underlined; deletions are shown as ~~strike-through~~.

~~\_\_\_\_\_ (a) Residential subdivision lots over 3.0 acres, in which:~~

~~1-(a) A pre-existing agricultural or open space land use will remain unchanged for a period of at least 5 years; and~~

~~2-(b) The area over 3.0 acres is approved by the Department.~~

~~(b) Tracts subject to site plan review in which there is no change in land use, as approved by the Department.~~

**[Note: §§1-21-41 (D) through (E) remain unchanged]**

\* \* \*

#### **§ 1-21-45. UTILITY AND LINEAR PROJECTS.**

(A) *Afforestation exemption.* Applicants for utility and linear projects that involve no change in land use shall not be required to comply with afforestation requirements provided in § 1-21-41 of this chapter, **UNLESS THE ACTIVITY IS SUBJECT TO THE REQUIREMENTS OF A PREVIOUS FOREST CONSERVATION PLAN PREPARED UNDER THIS CHAPTER.**

**(B) REFORESTATION AND CONSERVATION REQUIREMENTS. APPLICATIONS FOR UTILITY AND LINEAR PROJECTS NOT OTHERWISE EXEMPTED UNDER § 1-21-7 OF THIS CHAPTER, AND NOT SUBJECT TO THE REQUIREMENTS OF A PREVIOUS FOREST CONSERVATION PLAN PREPARED UNDER THIS CHAPTER, SHALL BE REQUIRED TO MEET THE REFORESTATION AND CONSERVATION REQUIREMENTS WHEN THE ACTIVITY RESULTS IN THE CUTTING, CLEARING, OR GRADING OF MORE THAN 20,000 SQUARE FEET OF FOREST.**

~~(B)~~ (C) *Other requirements.* ~~However, a~~**Applicants** for utility and linear projects shall be required to comply with all other requirements provided in this chapter.

\* \* \*

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

(1) The amendments and revisions to the FRO enacted by this Ordinance 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 DPDR for approval, reapproval, or extension on or after the effective date of this Ordinance.

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

(2) The provisions of the FRO as they existed before the adoption of this Ordinance 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 DPDR for approval, reapproval, or extension before the effective date of this Ordinance.

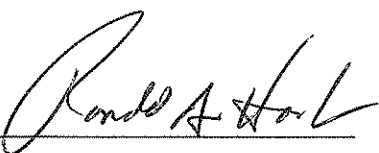
(b) Any revised Forest Stand Delineation, Preliminary Forest Conservation Plan, Final Forest Conservation Plan, or any combination thereof, and any exemption application, received by DPDR for approval, reapproval, or extension before the effective date of this Ordinance.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall be effective on October 1, 2009.

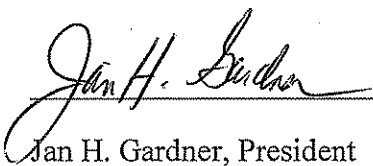
The undersigned hereby certify that this Ordinance was approved and adopted on the 29<sup>th</sup> day of September, 2009.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
FREDERICK COUNTY, MARYLAND



Ronald A. Hart  
County Manager

BY:  (SEAL)  
Jan H. Gardner, President

*KGM*  
*9/29/09*