

Chapter 1-21: Forest Resource Ordinance

Potential text amendment language

§ 1-21-5. DEFINITIONS.

DEPARTMENT. The Frederick County ~~Community Development~~ Division OF PLANNING AND PERMITTING.

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, ~~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.

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 on the worksheet published in the *TECHNICAL MANUAL* AS AMENDED BY FREDERICK COUNTY.

§ 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) a 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.

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.

(A) ~~Community Development Division~~ DIVISION OF PLANNING AND PERMITTING (“Department”).

(1) The review of all required plan submissions shall be administered by the Frederick County ~~Community Development Division~~ DIVISION OF PLANNING AND PERMITTING (“Department”).

[[Subsection 1-21-20(A)(2) through 1-21-20 (D) remains unchanged]]

§ 1-21-24. FEE-IN-LIEU PROGRAM.

[[Subsection 1-21-24(A) and (B) remains unchanged]]

(C) *Timing of payment.* Money contributed in lieu of forestation under this section shall be paid prior to the release of BUILDING PERMITS, 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.

[[Subsection 1-21-29(A) and (B)(1-3) remains unchanged]]

(4) For all subsection (B)(3), the first 50 acres shall be credited at a 1:~~2~~ 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.

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[[Subsection 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~~2.5 ratio, meaning that for every 1 acre of required forestation, ~~2~~ 2.5 acres of existing forest must be acquired;

[[Subsection 1-21-29(E)(2) through 1-21-29(F) remains 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;
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.

4. A FOREST CONSERVATION PLAN MUST BE SUBMITTED AND MITIGATION MUST BE PROVIDED FOR THE FOREST REMOVAL ACTIVITY.

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

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

[[Subsection 1-21-33(A) and (B) remains 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.

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

[[Subsection 1-21-40(A) through (C) remains 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

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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.

[[Subsection 1-21-40(E) and (F) remains 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
- (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.

(3) OVER EXISTING LAND PRESERVATION EASEMENTS.

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

[[Subsection 1-21-41(A) through (C) remains 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 SHALL BE TWO METHODS TO CALCULATE REFORESTATION REQUIREMENTS. THE METHOD THAT RESULTS IN THE MORE STRINGENT REQUIREMENT SHALL BE USED. THE FIRST METHOD SHALL REQUIRE A 1:1 REPLACEMENT, MEANING FOR EVERY ONE ACRE (OR PORTION THEREOF) OF FOREST REMOVED, ONE ACRE MUST BE PLANTED. THE SECOND METHOD SHALL BE THE METHOD OF CALCULATING REFORESTATION

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REQUIREMENTS DESCRIBED IN SUBSECTION 1-21-42(C). THIS METHOD SHALL BE CALLED THE "STANDARD METHOD".

~~(B-C)~~ *Definitions restated **FOR THE STANDARD METHOD**. **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 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:*

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

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

~~(C D)~~ *Calculations **FOR THE STANDARD METHOD**.*

(1) For all existing forest cover cleared on the net tract area above the applicable conservation threshold established by subsection (A) 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.

[[Subsection 1-21-44(A) through (D) remains unchanged]]

(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 ~~100~~ 25% of any afforestation requirement, subject to meeting the requirements of (A) through (D) above.

TABLE 1
SUMMARY OF PROPOSED CHANGES

	CODE SECTION/ISSUE	DISCUSSION
<u>1</u>	<u>1-21-5: DEFINITIONS</u>	<ul style="list-style-type: none"> • “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 “AS AMEDNED BY THE COUNTY” FOR ADMINISTRATIVE PURPOSES.
<u>2</u>	<u>1-21-6:</u> APPLICABILITY AND GENERAL REQUIREMENTS	<ul style="list-style-type: none"> • DIVIDE (A) INTO TWO SEPARATE LINES (A AND B) FOR CLARITY. • ADD CRITERIA TO BE CONSISTANT WITH 1-21-7(F) (DEVELOPMENT OF EXISTING SINGLE FAMILY LOTS)
<u>3</u>	<u>1-21-10(B)(2):</u> PROTECTIVE AGREEMENTS	<ul style="list-style-type: none"> • CHANGE “BOCC” TO FREDERICK COUNTY
<u>4</u>	<u>1-21-20:</u> ADMINISTRATIVE AGENCIES	<ul style="list-style-type: none"> • UPDATE DIVISION NAME
<u>5</u>	<u>1-21-24: FEE-IN-LIEU</u> PROGRAM	<ul style="list-style-type: none"> • 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.
<u>6</u>	<u>1-21-29: FOREST</u> BANKING PROGRAM	<ul style="list-style-type: none"> • CHANGE THE MITIGATION RATIO OF EXISTING FOREST FROM 2:1 TO 2.5:1 • RESTORES PRE-2011 LANGUAGE, UNDER WHICH MANY PROPERTY OWNERS ENTERED INTO THE FOREST BANKING PROGRAM. • INCREASES CONSERVATION OF EXISTING FOREST

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7	<p><u>1-21-31</u>: FOREST STAND DELINEATION; GEOTECHNICAL TESTING</p>	<ul style="list-style-type: none"> • REDUCE CLEARING LIMITS TO 20,000 SQFT IN ORDER TO PREVENT EXCESSIVE FOREST CLEARING PRIOR TO THE SUBMISSION OF A FOREST CONSERVATION PLAN. • CLARIFY THE REQUIREMENT TO SUBMIT A FOREST CONSERVATION PLAN FOLLOWING GEOTECHNICAL TESTING.
8	<p><u>1-21-33</u>: PRELIMINARY FOREST CONSERVATION PLAN</p>	<ul style="list-style-type: none"> • CHANGE PLAN TYPE TO MATCH ZONING ORDINANCE
9	<p><u>1-21-40 (B)</u>: CONSERVATION AND FORESTATION PRIORITIES</p>	<ul style="list-style-type: none"> • 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 • INCREASES CONSERVATION OF EXISTING FOREST. • RESTORES PRE-2011 LANGUAGE, UNDER WHICH MANY PROPERTY OWNERS ENTERED INTO THE FOREST BANKING PROGRAM. THE 2:1 RATIO HAS SLOWED BANKING CREDIT SALES. • 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 FRO COVENANTS. MOST PRESERVATION PROGRAMS ALREADY PROHIBIT FRO FROM OVERLAP.
10	<p><u>1-21-41</u>: AFFORESTATION AND AFFORESTATION THRESHOLD</p>	<ul style="list-style-type: none"> • 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 5% FOR THE FOLLOWING ZONING DISTRICTS: INSTITUTIONAL, R3 THROUGH R16, MIXED USE AND PLANNED DEVELOPMENTS, COMMERCIAL AND INDUSTRIAL.
11	<p><u>1-21-42</u>: REFORESTATION AND CONSERVATION THRESHOLD</p>	<ul style="list-style-type: none"> • RESTORES THE MINIMUM 1:1 REPLACEMENT REQUIREMENT FOR CLEARED FOREST (THE 1:1 PROVISION WAS ESTABLISHED PRIOR TO THE 2011 CODE AMENDMENT). • THIS WILL REDUCE FOREST CLEARING AND REQUIRE REPLACEMENT MITIGATION FOR AREAS THAT ARE CLEARED.
12	<p><u>1-21-44</u>: MISCELLANEOUS CREDITS</p>	<ul style="list-style-type: none"> • 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. • THIS CHANGE WILL RESULT IN MORE FOREST BEING PLANTED/PRESERVED VERSES ALLOWING STREET TREES AND OTHER NON-FOREST PLANTINGS TO MITIGATE ALL OF A PROJECTS FOREST MITIGATION REQUIREMENT.

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