



Bill No. 17-17

Concerning: Revisions to the County Forest Resource Ordinance

Introduced: December 5, 2017

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: _____

Frederick County Code, Chapter 1-21

Section(s) 5, 6, 10, 20, 24, 29, 31, 33, 40, 41, 42 & 44

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President Bud Otis on behalf of County Executive Jan Gardner

AN ACT to: Amend Chapter 1-21 of the Frederick County Code (Forest Resource Ordinance) to revise the forest planting, retention, and mitigation requirements.

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-21 Section(s) 5, 6, 10, 20, 24, 29, 31, 33, 40, 41, 42 & 44

Other: _____

Boldface

Underlining

[Single boldface brackets]

* * *

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

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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[~~, 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[~~-,~~], 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.

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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;[-] 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.

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(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]

§ 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] 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] 2.5 ratio, meaning that for every 1 acre of required forestation, [2] 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;

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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]

§ 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.

§ 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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(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.

§ 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-]C) 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:

<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 ([E]D) of this section.

([E]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 ([E]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.

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[Subsections 1-21-44(A) through (D) remain 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.

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