



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING

Department of Development Review & Planning

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FOREST BANKING PROGRAM

Section 1-21-29 of the Forest Resource Ordinance (FRO)

Because of the State legislature passing SB 526, the County may once again allow existing forest acres into the banking program.

(A) *Creation and purpose.*

- (1) *In general.* The Frederick County Forest Banking Program allows a person to create new forest areas or designate certain existing forest areas to be held in reserve (or "banked"), in order to be used to meet future forestation requirements imposed on regulated activities by this chapter.
- (2) *Definitions.*

EXISTING FOREST. Forest that:

1. Meets or exceeds the definition of "standard forest density" provided in § [1-21-5](#) when the forest banking applicant submits a forest conservation plan; or
2. Met or exceeded the standard forest density at any time in the 5 years prior to the submission of the forest conservation plan, and that was subject to either an agricultural or a commercial forestry declaration of intent.

NEW FOREST. Forest newly created on land that does not meet the definition of "standard forest density" at the time the forest banking applicant submits a forest conservation plan, and that was not the subject of forest cutting subject to either an agriculture or commercial forestry declaration of intent within the last 5 years.

(B) *Forest banking areas.* Only the following target areas may be admitted into the forest banking program:

- (1) New or existing forests that provide buffers for streams, creeks, floodplains, wetlands or other hydrologically-sensitive areas on lands that either are zoned Agriculture or in the judgment of the Department are primarily in bona fide agricultural use, as defined by the Frederick County Zoning Ordinance, [Chapter 1-19](#). The extent of the forest buffers acceptable for inclusion in the forest banking program shall be the largest allowed by the

following, unless otherwise approved by the Department for reasons pertaining to ecological benefit or improvement:

- (a) Where floodplain(s) exist, forest buffers shall be limited to 25 feet outside of the floodplain(s).
- (b) Where no floodplain(s) exist, forest buffers shall be limited to 100 feet in width on each side of a stream bank.
- (c) Where moderate slopes of 15% or more are immediately adjacent to hydrologically- sensitive area(s), forest buffers shall be limited to the extent of the steep slopes within the area that is 200 feet in width on each side of a stream bank or hydrologically-sensitive area.
- (d) Where steep slopes of 25% or more are immediately adjacent to hydrologically- sensitive area(s), forest buffers shall be limited to the extent of the steep slopes within the area that is 500 feet in width on each side of a stream bank or hydrologically-sensitive area.

(2) Existing forest that is critical habitat for threatened or endangered plant or sedentary animal species. Determination of the presence of threatened or endangered species shall be made by the Department of Natural Resources.

(3) Other areas that are:

- (a) Water re-charge zones for municipal or county public water supplies as designated by bona fide hydrological studies, or are listed in § [1-21-40](#)(B) of this chapter;
- (b) Not owned by a municipality or other local, state or federal governmental entity;
- (c) Not otherwise substantially protected by either this chapter or the Frederick County Zoning Ordinance requirements; and
- (d) Of such significance that loss of forest or the lack of creation of forests on such areas would cause a deleterious effect on the health, safety and welfare of the citizens.

(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.

(5) All applications under this subsection (B) shall provide substantial protection of substantially all of the target areas on a parcel or a set of contiguous parcels owned by the applicant, unless otherwise approved by the Department or the Planning Commission for reasons pertaining to ecological benefit or improvement, other hydrological protection measures implemented by other governmental programs, accommodation of existing farm buildings and residences, or drinking water access for grazing animals. The requirements of "substantial protection" shall be determined by the Department. Applications that

offer protection of only unserviceable or unusable areas for inclusion in the banking program, but omit other substantial target areas, such as stream buffers, within a subject parcel or set of contiguous parcels owned by the applicant, shall not be accepted into the banking program.

(C) *Administration.* *The Department shall administer the forest banking program, review for approval all forest conservation plans, and keep records of all forest banking sites and any transfers of forest bank credits from one person to another.* The Department shall review and have the authority to approve all credit transfers for compliance with forest banking area requirements. The Department shall perform all site inspections as required herein, and as described in § [1-21-20](#), and shall administer required financial guarantees associated with approved forest conservation plans.

(D) *Conditions of approval.* For a potential forest banking site to be accepted into the Frederick County Forest Banking Program, all the conditions set forth below must be satisfied.

1. Forest conservation plan. The forest banking applicant shall submit a forest conservation plan for review and approval by the Department.
2. Standards and specifications.
 - a. To create "new forest," the applicant must follow forestation specifications and standards provided in the technical manual or this chapter, including (but not limited to) species selection, control of exotic species, and stocking/survival ratios.
 - b. For approval of "existing forest," the applicant must demonstrate that the forest ecosystem is in a healthy condition, or provide remedial measures to bring the forest into a healthy condition, such as providing eradication measures to control invasive, exotic species.
3. *Legal documents and financial guarantees.* The applicant shall execute and submit to the Department all necessary documents and financial guarantees as follows:
 - a. A long-term protective agreement, as described in § [1-21-10](#);
 - b. A short-term protective agreement (a Forest Improvements and Protection Agreement (FIPA)), as described in § [1-21-10](#) and any associated, required financial guarantee, as described in § [1-21-25](#); and
 - c. A forest banking agreement that describes the rights and obligations of the banking applicant with regard to the forest easement credit transfers.
4. *Site inspection.* Before the Department approves a transfer or use of forest banking credits, the Department shall verify from the Department inspector's site review that the conditions of the approved final forest conservation plan have been met with regard to establishment of protective features and planting specifications; and that any:

- a. "Existing forest" meets the definition of "standard forest density," or is covered by an acceptable financial guarantee, as provided in § [1-21-25](#);
- b. "New forest" has been planted, and either:
 - i. Has matured to meet the definition of "standard forest density;" or
 - ii. Is covered by an acceptable FIPA and a financial guarantee, as provided in § [1-21-25](#); has been planted in accordance with the final forest conservation plan; and has been inspected and approved by Department inspectors.

(6) *Financial agreements.* Any financial agreements between persons regarding approved forest bank transfers shall occur solely as a private transaction. Neither the Department nor the county shall become a party to the financial aspects of any transfers.

(7) *Official notification of credit transfer.* Both the grantor and grantee of any forest credit transfer shall notify the Department in writing of the agreement to transfer forest credit using forms approved by the Department.

(E) *Credit ratios.* Forest bank transfers of:

- a. "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;
- b. "New forest" shall be credited at a 1:1 ratio, meaning that for every 1 acre of required forestation, only 1 acre of new forest must be acquired.

(F) *Species diversity requirements.* The acres of existing forest combined with new forest shall meet the species diversity requirements stipulated in § [1-21-43](#)(B)(2).

(Ord. 07-25-465, 7-19-2007; Ord. 11-19-585, 7-28-2011; Ord. 14-23-678, 11-13-2014; Bill No. 17-17, 2-28-2018)

For additional information:

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