

Overview of the Frederick County Forest Resource Ordinance (FRO)

State Legislation:

The Maryland State Legislature enacted the Forest Conservation Act of 1991 (FCA) in an effort to protect and enhance forest resources in the State of Maryland. The FCA applies to all Maryland counties with less than 200,000 acres of forest. At this time, this includes all counties in Maryland except for the western-most Garrett and Allegany. The FCA required subject counties to adopt a State-controlled version of the FCA by Jan. 1, 1993.

In Frederick County, the forest law was adopted on December 15, 1992. The Frederick County version of the FCA is called the **Forest Resource Ordinance (FRO)**. It follows very closely the regulated requirements of the FCA. There are, however, a few minor differences between the Frederick County FRO and the State FCA, which are explained in later paragraphs.

General "Quantitative" Requirements:

Generally speaking, development projects (site plan parcels and subdivisions) that are equal to or greater than 40,000 sq. ft. (0.92 acre) are subject to the FCA (and FRO). Beyond this basic requirement, the FCA (and FRO) requirements are relatively complex. For a complete list of all activities subject to FRO: https://codelibrary.amlegal.com/codes/frederickcounty/latest/frederickco_md/0-0-0-9278. The FCA and FRO were designed to distribute the responsibilities of forest stewardship among all development types in an equitable manner. Therefore, a varied set of regulations was needed to cover all types of development sites, so that no one particular type of site (such as a fully wooded vs. non-wooded site) would carry a heavier burden in relation to other types of development sites.

In order to fairly distribute forest stewardship responsibilities, the FCA and FRO encompasses two "quantitative" goals. The first quantitative goal is to replace a certain amount of forest that is removed as a part of the development process. This is called **Reforestation** or **Conservation**. In the Standard Method of calculation, there are three reforestation formulae that are used to determine the amount of forest that a developer must replant or "reforest". *[In Frederick County, there is a unique requirement to replant the greater of either the Standard Method acreage or a 1:1 Replacement acreage. See "1:1 Replacement" below.]* These formulae are based on a "Reforestation/Conservation Threshold" which is a percentage that ranges from 15-50%, depending on zoning of the development site.

In one formula, a developer gets credit if the amount of forest saved is above the Reforestation/Conservation Threshold. In another formula, a developer is penalized at a small 1:1 ratio for the amount of forest removed that is above the Reforestation Threshold. In the last formula, the developer is penalized at a larger 2:1 ratio for the amount of forest removed that is below the Reforestation Threshold. The result of these three reforestation formulae is the amount of forest the developer is required to replant or reforest under the Standard Method.

However, in Frederick County, a developer applicant must compare the Standard Method replanting requirement with a 1:1 Replacement acreage. That is, for every one acre of forest removed, one acre of forest must be replanted. The developer applicant must compare the two values and use the higher acreage requirement in Frederick County. This 1:1 Replacement requirement is stricter than Maryland State FCA requirements.

The other “quantitative” goal is **Afforestation**. Afforestation requires developers to plant forest in accordance with the “Afforestation Threshold” (which in Frederick County is a uniform 20% of the development site, again, this requirement is stricter than the Maryland State FCA requirements.) when the amount of forest on the development site is less than the Afforestation Threshold. This concept of afforesting a development site surprises a lot of people, especially developers (or subdividers) who encounter the FRO for the first time. They say, “*You mean I have to plant forest even if there are no trees on the site?*” The answer is, “*Yes, up to 20% of the development site must be forested.*”

General “Qualitative” Requirements:

The FCA (and FRO) prioritizes the types of environments to be preserved and planted. Essentially, the highest priority sites are those that are **hydrologically sensitive**. These would include streams, wetlands, rivers, springs, etc. The reason that hydrologically sensitive areas are specified as priority areas is that forest cover on these areas helps to absorb excess nutrients before they enter the water systems, and forest cover also stabilizes the soil in hydrologically sensitive areas, thus reducing erosion. Also, many valuable wildlife habitats occur in hydrologically sensitive areas.

There are other areas of priority for forest retention and planting. They are habitat areas for rare, endangered, or threatened species; areas which connect large blocks of forested tracts that facilitate wildlife movement; areas containing specimen tree species; forest areas that are parts of historic landscapes or building environments; and forest areas that buffer non-compatible land uses. Lastly, areas that border unlike land uses or that are adjacent to highways also qualify as priority areas for forestation.

General Administrative Requirements:

There are three separate forest plan submission requirements. In Frederick County, these plans can be combined into one or two submissions, depending on the simplicity of the development project. The first plan requirement is the submission of forest and environmental data on a development site. This is called the **Forest Stand Delineation Plan**.

The second submission is a **Preliminary Forest Conservation Plan** that shows how the developer intends to preserve and/or plant areas of new forest. Included in this plan are all the formulae for determining how much forest must be planted and/or preserved. The last submission is a **Final Forest Conservation Plan (FFCP)**. The FFCP includes the following: legal documents for long-term protection of forest areas; a 2-year maintenance agreement for the forest planting areas; and a plan document for construction of forest improvements.

The FRO requires that all applicants (of development projects subject to FRO) to submit forest plans prepared by a **qualified professional**. There are three categories of qualified forest professionals in the State of Maryland:

- 1) Maryland Registered Landscape Architects;
- 2) Maryland Registered Foresters; and,
- 3) a broad third class of individuals who, by a combination of education and experience, are knowledgeable about forests.

Unique Characteristics of the FRO:

Frederick County was required to adopt strict requirements of the FCA in 1992. However, some minor flexibility has allowed the FRO to be uniquely tailored to the needs of Frederick County. Here are the differences (some minor, some major) between the Frederick County FRO and the Maryland State FCA:

Minor Differences:

- 1) **Agricultural streams** (and wetlands) are listed as the highest priority area environment for forest preservation and planting in Frederick County. This is an attempt to focus efforts in establishing riparian forests on farm streams to slow sedimentation and nutrient overload of Frederick County waterways.
- 2) **Survival rates** of planted tree seedlings and container stock in Frederick County are slightly higher than State FCA standards. This is done to help future owners of forest easement areas have a higher stocking ratio on their newly planted forest in order to insure a better growth for transition into a living forest environment.
- 3) **Combined submissions** of forest plans for most development projects (except for most major subdivisions and all PUD's and MXD's) are allowed in Frederick County in order to reduce administrative paperwork for both the developer and the County.
- 4) **Special credits** for street tree, specimen tree, "tree-save" areas, landscape areas, rain garden and bio-retention pond credits are allowed at only ¼ credit, but with no required long-term (easements) protection required. This was a "trade-off" (approved by the State) requested by Frederick County, in order to reduce the burden of legally tracking each individual street tree.
- 5) **Registered surveyors** who have completed State forestry course-work are routinely deemed qualified professionals for all Simplified and Intermediate Delineation Plans.
- 6) **Ordinance language** of the Frederick County FRO has been reorganized into five chapters--vs. the FCA's original 17 chapters--for user-friendly clarity.
- 7) **Species Diversity.** Frederick County has a set of species and plant-horizon diversity requirements that are not required in the State FCA.
- 8) **Three-Year Maintenance Program** is required for any planting project in Frederick County. The State FCA requires only two years.
- 9) **Invasive Species Suppression** is required in Frederick County, whilst the State FCA is silent on this issue.

Major Differences:

- 10) **Reforestation Requirements** are stricter in Frederick County. In Frederick County a developer must the higher value of either the State FCA requirements or a 1:1 replacement value. That is, a developer applicant must calculate both the Standard Method under the State FCA and a 1:1 Replacement acreage for all forest acreage removed. The higher value must be replanted.