

TOWN OF LAYTONSVILLE, MARYLAND

**Corrected August 3, 2004
Amended February 7, 2006
Amended February 2, 2010
Amended May 3, 2011**

Forest Conservation and Reforestation Ordinance

An Ordinance to establish a forest conservation and reforestation program for the Town of Laytonsville in compliance with the standards prescribed by the Maryland General Assembly.

WHEREAS, the General Assembly of Maryland in 1991 adopted the Forest Conservation Act., Subtitle 16. "Natural Resources", Annotated Code of Maryland, and Section 5-1603(a) thereof provides that all units of local government having planning and zoning authority shall develop a local forest conservation program consistent with the intent, requirements, and standards of said Act.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Town of Laytonsville that this Ordinance be adopted as the local forest conservation program of the Town of Laytonsville:

Section I. Purpose

1.1 Purpose.

This Ordinance is adopted to meet the requirements of the Forest Conservation Act, Subtitle 16. "Natural Resources". Annotated Code of Maryland

Section II Forest and Tree Conservation Definitions

In this ordinance the following terms have the meanings indicated.

2.1 "Afforestation" means:

A. Establishment of a forest on an area from which forest cover has been absent for a long period of time;

B. Planting of open areas which are not presently in forest cover; or

C. Establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

2.2 "Agricultural activity" means farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.

2.3 "Agricultural and resource areas" means undeveloped areas zoned for densities of less than or equal to one dwelling unit per 5 acres and corresponds to the Town Zoning Classification(s) "Agriculture" (See Section 105 of the Zoning Ordinance for the Town of Laytonsville).

2.4 "Applicant" means a person who is applying for subdivision or project plan approval or a grading or sediment control permit, or who has received approval of a forest stand delineation or forest conservation plan.

2.5 "Approved forest management plan" means a document:

A. Approved by the Department of Natural Resources forester assigned to Montgomery County; and which operates as a protective agreement for forest conservation as described in the Natural Resources Article, Sec. 5-1607(e) -- (f), Annotated Code of Maryland.

2.6 "Caliper" means the diameter measured at 2 inches above the root collar.

2.7 "Champion tree" means the largest tree of its species within the United States, the State, county, or Laytonsville;

2.8 "Champion tree of the state" means a tree which appears in the State Forest Conservation Manual list of State champion trees.

2.9 "Commercial and industrial uses" means manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding and parking areas, and corresponds to the Town of Laytonsville Zoning Classification(s) "CI -Commercial" and "CH -Commercial Historic".

2.10 "Commercial logging or timber harvesting operations" means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

2.11 "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall:

- A. Be likely to contribute to the long term survival of the species;
- B. Be likely to be occupied by the species for the foreseeable future; and

- C. Constitute habitat of the species which is considered critical under Natural Resources Article, Sec. 4-2A-04 and 10-2A-206, Annotated Code of Maryland.

2.12 "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, Sec. 4-2A-04 and 10-2A-04, Annotated Code of Maryland.

2.13 "Declaration of intent" means:

A. A signed and notarized statement by a landowner or the landowner's agent certifying the activity on the landowner's property:

(1) Is for certain activities exempted under this ordinance or Natural Resources Article, Sec. 5-103 and 5-1601 --5-1612, Annotated Code of Maryland.

(2) Does not circumvent the requirements of this ordinance or Natural Resources Article, Sec. 5-103 and 5-1601 --5-1612, Annotated Code of Maryland, and

(3) Does not conflict with the purposes of any other declaration of intent; or

B. The document required under COMAR 08.19.01.05 or this ordinance.

2.14 "Department" means the Town of Laytonsville Planning Commission or their designated representative charged with implementing this ordinance.

2.15 Development Project.

A. "Development project" means the grading or construction' activities occurring on a specific tract that is 40,000 square feet or greater. "Development project" includes redevelopment.

2.16 "Development project completion" means for the purposes of afforestation, reforestation, or payment into a fund:

A. The release of the development bond, if required;

B. Acceptance of the project's streets, utilities, and public services by the Town; or

C. Designation by the Town or State that a development project has been completed, or particular stage of a staged development project, including a planned unit development, has been completed.

2.17 Forest.

A. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. This definition includes:

(1) Areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2 inch or greater diameter at 4.5 feet above the ground and larger; and

(2) Areas that have been cut but not cleared.

B. "Forest" does not include orchards.

2.18 "Forest Conservancy District Board" means the forestry board created for each state forestry conservancy district under Natural Resources Article, Sec. 5-601 --5-610, Annotated Code of Maryland.

2.19 "Forest conservation" means the retention of existing forest or the creation of new forest at the levels set by the State or Town.

2.20 "Forest Conservation and Management Agreement" means an agreement as stated in the Tax-Property Article, Sec. 8-211, Annotated Code of Maryland.

2.21 "Forest Conservation Manual" means the current version. The current version is the 3rd Edition by the Maryland Department of Natural Resources, which is incorporated herein by reference and which sets forth standards for the preparation of forest stand delineations and forest conservations plans. (Amended August 3, 2004).

2.22 "Forest conservation plan" means a plan approved pursuant to Sections 5 and 6 of this ordinance.

2.23 "Forest cover" means the area of a site meeting the definition of forest, measured to the nearest 1/10 acre.

2.24 "Forest management plan" means a plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

2.25 "Forest stand delineation" means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Technical Manual.

2.26 "Growing season" means the period of consecutive frost free days as stated in the current soil survey for Montgomery County published by the National Cooperative Soil Survey Program, 16 U.S.C. Sec. 590 (a) --(f).

2.27 "High density residential areas" means areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, and corresponds to the Town's R-1 Residential, R-2 Residential, R-3 Residential, and R-H

Residential Historic zoning classifications.

2.28 "Institutional development area" means schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, post offices, cemeteries and churches.

2.29 "Intermittent stream" means a stream in which surface water is absent during a part of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

2.30 "Landscaping plan" means a plan drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater in size using native or indigenous plants when appropriate and which is made part of an approved forest conservation plan.

2.30.1 "Linear project" means a project which: (Amended February 7, 2006)

- A. Is elongated with nearly parallel sides:
- B. Is used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles; and
- C. May traverse fee simple properties through defined boundaries, or established easement rights.

2.31 "Lot" means a parcel of land, the boundaries of which have been established by deed or plat recorded among the land records of Montgomery County, Maryland.

2.32 "Maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, Sec. 5-1605, Annotated Code of Maryland, and this ordinance.

2.33 "Medium density residential areas" means areas zoned for densities greater than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service. This definition does not currently correspond to any Town zoning classification but is provided should new zone classifications be created or prompted by future annexation that may meet this definition.

2.34 "Mixed use development" means a single, relatively high density development project, usually commercial in nature, which includes two or more types of uses.

2.35 "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

2.36 "Net tract area" means: (Amended February 7, 2006)

1. Except in agriculture and resource areas the total area of a site, including both forested and non-forested areas, to the nearest one-tenth acre, reduced by that area where the forest clearing is restricted by another local ordinance or program;
2. In agriculture and resource areas, the portion of the total tract for which land use will be used for primarily agricultural activities, reduced by the area where forest clearing is restricted by another local ordinance or program;
3. For a linear project:
 - A. The area of a right-of-way width, new access roads, and storage; or
 - B. The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

2.37 Nontidal Wetlands means an area inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and is considered a nontidal wetland in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency. "Nontidal wetlands" does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.

2.38 "Offsite means outside of the limits of the area encompassed by the tract.

2.39 "Onsite" means within the limits of the area encompassed by the tract, including an area classified as a 100 year floodplain.

2.40 "100-year flood" means a flood which has a 1 percent chance of being equalled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

2.41 "100-year floodplain" means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

2.42 "Perennial stream" means a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey, as confirmed by field verification.

2.43 "Person" means the federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

2.44 "Planned unit development" means a development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by the Town with at least 20 percent of the land permanently dedicated to open space.

2.45 "Public utility" means any transmission line or electric generating station; or water, sewer, electric, gas, telephone, or television cable service line.

2.46 Reforestation

A. "Reforestation" or "reforested" means:

(1) the creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years; or

(2) the establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual. "Reforestation" or "reforested" includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2500 square feet or more of area.

2.47 "Regulated activity" means any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater: (a) subdivision (b) grading; (c) an activity that requires a sediment control permit; or (d) project plan of a local agency.

2.48 "Retention" means the deliberate holding and protecting of existing trees, shrubs, or plants on the site according to established standards as provided in the Forest Conservation Technical Manual.

2.49 "Sediment control permit" means the authorization of an activity regulated under a sediment control plan as provided in Environment Article, Title 4, Annotated Code of Maryland.

2.50 "Seedling" means an unbranched woody plant, less than 24 inches in height and having a diameter of less than 1/2 inch measured at 2 inches above the root collar.

2.51 "Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

2.52 "Stream buffer" means all lands lying within 50 feet, measured from the top of each normal bank of a perennial or intermittent stream.

2.53 "Subdivision" means any division of a unit of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

2.54 Timber Harvesting.

A. "Timber harvesting" means a tree-cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor. "Timber harvesting" does not include grubbing and clearing of root mass.

2.55 "Town" means the Mayor and Council of Laytonsville and includes their designated representatives charged with implementing this Ordinance.

2.56 "Tract" means property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to this ordinance.

2.57 "Tract for a planned unit development" means the entire property subject to a planned unit development.

2.58 "Tree" means a large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

2.59 "Variance"

A. "Variance" means relief from Natural Resources Article, Sec. 5-1601 --5-1612, Annotated Code of Maryland, or this ordinance. "Variance" does not mean a zoning variance.

2.60 "Watershed" means all land lying within an area described as a subbasin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08.

2.61 "Whip" means an unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar.

Section III Application.

3.1 Except as provided in section 3.2 of this article, this ordinance applies to:

A. A person making application for a subdivision, project plan, grading, or sediment control approval on units of land 40,000 square feet or greater after the effective date of this ordinance.

B. A public utility not exempt under Subsection 3.2 E and F of this section.

C. A unit of county or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas 40,000 square feet or greater.

3.2 This ordinance does not apply to:

A. Highway construction activities under Natural Resources Article, Sec. 5-103, Annotated Code of Maryland.

B. Areas governed by the Chesapeake Bay critical Area Protection Law, Natural Resources Article, Sec. 8-1801 --8-1816, Annotated Code of Maryland.

C. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax - Property Article, Sec. 8-211, Annotated Code of Maryland, that are completed:

(1) Before July 1, 1991; or

(2) After July 1, 1991, on property which has not been the subject of application for a grading permit for development within 5 years after the logging or harvesting operation, and is the subject of a declaration of intent as provided for in section 3.3 of this article, approved by the Town.

D. Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, except that a person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a 1-year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in section 3.3 of this article which includes (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and (2) A sketch map of the property which shows the area to be cleared.

E. The cutting or clearing of public utility rights-of-way or land for electric generating stations licensed under §7-204, §7-205 or §7-208 of the Public Utility Companies Article, if the required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, Sec. 5-1603(f), Annotated Code of Maryland; and the cutting or clearing of the forest is conducted to minimize the loss of forest. **(Amended May 3, 2011)**

F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under State law. **(Amended May 3, 2011)**

G. Except for a public utility subject to Section 3.2F of this article, routine maintenance or emergency repairs of a public utility right-of-way if: (1) The right-of-way existed before the effective date of this ordinance; or (2) The right-of-way's initial construction was approved under this Ordinance.

H. A residential construction activity that is conducted on an existing single lot of any size of record at the time of application, or a linear project not otherwise exempted under this ordinance, if the activity: (Amended August 3, 2004) (Amended February 7, 2006)

1. Does not result in the cumulative cutting, clearing, or grading of more than 20,000 (Amended February 2, 2010) square feet of forest;
2. Does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest;
3. Is the subject of a declaration of intent filed with the Town, as provided for in Section 3.3 of this article, stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest.

I. Strip or deep mining of coal regulated under Natural Resources Article, Title 7, Subtitle 5 or 5A, Annotated Code of Maryland.

J. Noncoal surface mining regulated under Natural Resources Article, Title 7, subtitle 6A, Annotated Code of Maryland.

K. An activity required for the purpose of constructing a dwelling intended for the use of the owner, or a child of the owner, if the activity:

(1) Does not result in the cutting, clearing, or grading of more than 20,000 (Amended February 2, 2010) square feet of forest; and

(2) Is the subject of a declaration of intent filed with the Town, as provided for in Section 3.3 of this article, stating that the lot will not be the subject of further subdivision or a regulated activity within five (5) years of the cutting, clearing, or grading of forest (Amended February 2, 2010).

L. A grading or sediment control plan approved before July 1, 1991 or an application for final subdivision plat or equivalent approval, as defined by the Town of Laytonsville subdivision regulations, that is filed before January 1, 1993 or the effective date of this ordinance, whichever is earlier, and is substantively complete for final determination under application criteria other than forest conservation requirements.

M. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if the transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and both the grantor and grantee file a declaration of intent, as provided for in Section 3.3 of this article.

3.3 Declaration of Intent.

A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under this ordinance.

B. A person seeking an exemption under section 3.2 C, D, H, K, and N of this article shall file a declaration of intent with the Town.

C. The declaration of intent is effective for 5 years.

D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity: (1) Does not conflict with the purpose of any existing declaration of intent, and (2) Complies with the applicable requirements for an exempted activity.

E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent: (1) There shall be an immediate loss of exemption, or (2) There may be a noncompliance action taken by the Town, as appropriate, under this ordinance.

F. An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this ordinance are satisfied.

G. The Town may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:

- (1) Meet the retention, afforestation and reforestation requirements established in Articles III --XIII of this ordinance;
- (2) Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the declaration of intent;
- (3) Be subject to other enforcement actions appropriate under this ordinance; or
- (4) File a declaration of intent with the Town.

H. In its determination of appropriate enforcement action, the Town may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this ordinance.

Section IV General Requirements.

4.1 A person making application after the effective date of this ordinance, for subdivision or local agency project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater shall:

- A. Submit to the Town a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and
- B. Use methods approved by the Town, as provided in the Maryland Department of Natural Resources Forest Conservation Technical Manual, to protect retained forests and trees during construction.

4.2 If a local agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D--G apply.

4.3 The Town shall not issue a building permit to an applicant for any clearing, construction or development that will result in the trimming, cutting, removal, or injury to a roadside tree, unless exempt under Section III, Subsection 3.2E or F or

as provided herein above until the applicant first obtains a permit from the Maryland Department of Natural Resources. A person may remove a roadside tree or its braches without first obtaining a permit if: **(4.3 added May 3, 2011)**

- (a) The tree is unrooted or its branches broken so as to contact telephone, telegraph, electric power or other wires carrying electric current or if the tree or branches endanger persons or property.
- (b) A tree may be cut down and removed by an abutting property landowner for the landowners own use if the tree is standing within the right-of-way of a public road which has not been surfaced with either stone, shell, gravel, concrete, birch, asphalt or other improved surface.

Section V Forest Stand Delineation.

5.1 Criteria.

A. A forest stand delineation shall be submitted at the initial stages of subdivision or project plan approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.

B. The delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01.

C. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:

- (1) A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;
- (2) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15 percent or more;
- (3) Forest stand maps indicating species, location, and size of trees and showing dominant and co dominant forest types;
- (4) Location of 100-year floodplains;
- (5) Information required by the Forest Conservation Technical Manual; and
- (6) Other information the Town determines is necessary to implement this ordinance.

D. An approved forest stand delineation may remain in effect for a period not longer than 5 years.

E. Within 30 calendar days after receipt of the forest stand delineation, the Town shall notify the applicant whether the forest stand delineation is complete and

correct. If the Town fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct. The Town may require further information or provide for an additional 15 calendar days under extenuating circumstances.

Section VI Forest Conservation Plan

6.1 Upon notification that the forest stand delineation is complete and correct, the applicant shall submit a forest conservation plan to the Town. The forest conservation plan shall be reviewed by the Town concurrently with the application for final subdivision or project plan approval, before a grading permit or sediment control permit is approved. The requirements contained in the forest conservation plan shall be made a condition of any application approval. During the different stages of the review process, the forest conservation plan may be modified provided the Town approves of the changes.

A. The forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect or a qualified professional who meets the requirements stated in COMAR 08.19.06.01.

B. In developing the forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on site. If existing forests on site cannot be retained, the applicant shall demonstrate: (1) how techniques for retention on site have been exhausted, (2) why priority areas specified in Section IX cannot be preserved, (3) how the sequence for afforestation or reforestation will be followed, and (4) where on site priority planting areas are located.

C. If the applicant can demonstrate to the satisfaction of the Maryland Department of Natural Resources that the onsite or offsite planting requirements cannot be reasonably accomplished, the applicant may propose to make a payment into the State's forest conservation fund as provided for in section X of this ordinance.

D. A regulated activity that occurs wholly or partly within areas regulated as a nontidal wetland is subject to COMAR 08.05.04 and this ordinance. Any area of forest within a nontidal wetland in the net tract area that is retained shall be counted towards the forest conservation requirements. For mitigation purposes, a forested nontidal wetland permitted to be cut or cleared under COMAR 08.05.04 shall be shown on the forest conservation plan and be subtracted on an acre per acre basis from the total amount of forest to be cut or cleared. Nontidal wetlands shall be considered to be priority areas for retention and replacement. Forested nontidal wetland identification and delineation should be done at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts on those wetlands.

E. A forest conservation plan is intended to govern conservation, retention, maintenance, and any afforestation or reforestation requirements applicable to the site. The forest conservation plan shall contain:

- (1) the approved forest stand delineation,

- (2) a table of values including the net tract areas, area of forest conservation, and area of proposed planting,
- (3) a map showing where the conservation areas are located,
- (4) the location and type of protective devices to be used
- (5) an explanation of how or why those conservation areas were chosen,
- (6) an afforestation or reforestation plan,
- (7) a construction timetable which must include the sequence of conservation procedures,
- (8) the limits of disturbance,
- (9) the location of stockpile areas,
- (10) a binding 2-year maintenance agreement for all planted areas as specified in 6.2,
- (11) a binding long-term protective agreement as specified in 6.3,
- (12) information required by the technical manual, and
- (13) other information as may be required by the Town.

F. To the extent practicable, entities providing public utilities shall design facilities that will serve a site in a manner that avoids identified conservation areas and minimizes forest loss.

6.2 An applicant required to conduct afforestation or reforestation under this ordinance shall include a binding 2-year maintenance agreement covering all planted areas as part of the forest conservation plan. The maintenance agreement shall detail how the areas designated for planting will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in the technical manual. The Town shall be a signatory to or a third party beneficiary of the maintenance agreement. The maintenance agreement shall provide for access by the Town to monitor the planting site.

A. The person required to do the planting shall present evidence of title or his right to enter upon the land.

B. The Town may not release the financial security or end monitoring without receipt of a legally binding deed, long-term lease or conservation easement agreement on all planting areas.

6.3 An applicant under this ordinance shall have in effect at all times approved long-term protective measures to retain as forest all land forested, afforested, or reforested as part of a forest conservation plan. The long-term measures shall include legally binding protective agreements such as: (1) covenants running with the land, (2) deed restrictions, (3) conservation easements, and (4) land trusts. The protective agreements shall provide protection for retained and planted areas, and limit the uses of those areas to ensure forest conservation. An applicant may include another long-term protective measure if the applicant demonstrates to the satisfaction of the Town that the measure will provide the required long-term protection.

6.4 Within 45 days after the receipt of the plan, the Town shall notify the applicant whether the forest conservation plan is complete and approved. If the Town fails to notify the applicant within that 45 days, the plan shall be treated as complete and approved. The Town may require further information or provide a 15 day extension under extenuating circumstances.

6.5 The Town may revoke an approved conservation plan if it finds that: (1) the plan has been violated, (2) the approval was obtained through fraud, misrepresentation, misleading statement or omission of a relevant fact, or (3) changes in site conditions. The Town may issue a stop work order against a person who violates a provision of this ordinance, a forest conservation plan, or a maintenance agreement. Before revoking a forest conservation plan, the Town shall notify the violator in writing and provide an opportunity for a hearing.

Section VII Afforestation and Retention

7.1 Afforestation Requirement. This is an afforestation threshold established for all Land Use categories defined by this ordinance. A person making application after the effective date of this ordinance for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater, shall:

A. Conduct afforestation on the lot or parcel in accordance with the following:

(1) A tract having less than 20 percent of the net tract area in forest cover shall be afforested up to at least 20 percent of the net tract area for the following land use categories:

- (a) Agriculture and resource areas, and
- (b) Medium density residential areas;

(2) A tract with less than 15 percent of its net tract area in forest cover shall be afforested up to at least 15 percent of the net tract area for the following land use categories:

- (a) Institutional development areas,
- (b) High density residential areas,
- (c) Mixed use and planned unit development areas, and
- (d) Commercial and industrial use areas;

B. When cutting into forest cover that is currently below the afforestation percentages described in Section 7.1(A) of this section:

(1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and

(2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

7.2 Retention. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Town, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

A. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, nontidal wetlands, and critical habitats;

B. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

7.2.1 The following trees, shrubs, plants and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that the applicant qualifies for a variance in accordance with Section 14.1 of this article: (Amended February 2, 2010)

A. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:

(1) The federal endangered Species Act of 1973 in 16 U.S.C. Sec. 1531--1544 and in 50 CFR Part 17,

(2) The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, Sec. 10-2A-01--10-1010-2A-09, Annotated Code of Maryland, and

(3) COMAR 08.03.08

B. Trees that:

(1) Are part of a historic site,

(2) Are associated with a historic structure, or

(3) Have been designated by the state or the Town as a national, state, or county champion tree; and

C. Any tree having a diameter measured at 4.5 feet above the ground of:

(1) 30 inches or more; or

(2) 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 Maryland Department of Natural Resources.

Section VIII Reforestation

8.1 Forest Conservation Threshold.

A. There is a forest conservation threshold established for all land use categories, as provided in Subsection B of this section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

B. After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the forest conservation fund, according to the following thresholds:

<u>Category of Use</u>	<u>Threshold Percentage</u>
(1) Agricultural and resource areas	50 percent;
(2) Medium density residential areas	25 percent;
(3) Institutional development areas	20 percent;
(4) High density residential areas	20 percent;
(5) Mixed use and planned unit development areas	15 percent;
(6) Commercial and industrial use areas	15 percent.

C. Calculations.

(1) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for each acre removed.

(2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Forest Conservation Technical Manual. (See Technical Manual Appendix D worksheet).

(3) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold.

Section IX Priorities and Time Requirements for Afforestation and Reforestation.

9.1 Sequence for Afforestation and Reforestation.

A. After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Town, is as follows:

- (1) Selective clearing and supplemental planting on site;
- (2) Onsite plantings, if economically feasible, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
- (3) Onsite plantings, using whip and seedling stock;
- (4) Landscaping of areas under an approved landscaping plan.
- (5) Offsite plantings, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
- (6) Offsite plantings, using whip and seedling stock;
- (7) Natural regeneration on site; and
- (8) Natural regeneration offsite.

B. A sequence other than the one described in Subsection A of this section may be used for a specific project, if necessary, to achieve the objectives of the Town land use plan or Town land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.

C. The following are considered a priority for afforestation and reforestation:

- (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
- (2) Establish or enhance nonforested areas on 100-year floodplains, when appropriate;
- (3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and, where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- (4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
- (5) Establish plantings to stabilize slopes of 25 percent or greater and

slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;

(6) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of way;

(7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and

(8) Use native plant materials for afforestation or reforestation, when appropriate.

D. A person required to conduct afforestation or reforestation under this ordinance shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following development project completion.

Section X Payment Instead of Afforestation and Reforestation

10.1 Forest Conservation Fund.

A. There is established a forest conservation fund for the State of Maryland. If a person subject to this ordinance demonstrates to the satisfaction of the Town and the Maryland Department of Natural Resources that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money, at a rate of 50 cents per square foot of the area of required planting, into the state forest conservation fund. Money contributed instead of afforestation or reforestation under this article shall be paid within 90 calendar days after development project completion. The state shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or three growing seasons, whichever is a greater time period, after receipt of the money. At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money. (Amended May 4, 2004)

B. Money deposited in the state forest conservation fund shall be governed as follows: **(Amended May 3, 2011)**

- (1) Payments by an applicant made instead of afforestation or reforestation shall be used only for the costs associated with reforestation and afforestation, including site identification, acquisition, preparation, maintenance of existing forests, and achieving urban canopy goals. **(Amended May 3, 2011)**
- (2) Fines collected from persons found to be in noncompliance with their declaration of intent, forest conservation plan or the associated 2-year maintenance agreement, this subtitle, or local ordinances and regulations, may be used by the Department for any costs associated with the implementation

of Natural Resources Article, §§5-1601-5-1612, Annotated Code of Maryland, and this subtitle. **(Amended May 3, 2011)**

- (3) If payments deposited un Subsection 10.1 remain in the Fund longer than 2 years or 3 growing season, the applicant may file a request, on a form provided by the Department, for the return of the unspent monies, if the applicant demonstrates to the satisfaction of the Department that the returned monies will be spent of tree plantings that: **(Amended May 3, 2011)**
- (a) Will occur within the same municipality or watershed as the applicant's project; and
 - (b) Are not being planted to comply with:
 - (i) Reforestation or afforestation requirements of the State or local Forest Conservation Act program, or
 - (ii) Requirements of any other federal , state, or local statute, ordinance, or regulation.

C. Sites for Afforestation or Reforestation Using Fund Money.

(1) Except as provided in Subsection C(2) of this section, the reforestation or afforestation requirement under this section shall occur in the town and watershed in which the project is located.

(2) If the reforestation or afforestation cannot be reasonably accomplished in the town and watershed in which the project is located, then the reforestation or afforestation shall occur in the town or watershed in the state in which the project is located.

Section XI Recommended Tree Species.

Tree species used for afforestation or reforestation shall be native to the Town, when appropriate, and selected from a list of approved species adopted by the Town.

Section XII Financial Security for Afforestation and Reforestation.

12.1 Bonding.

A A person required to conduct afforestation or reforestation shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security

approved by the Town. The surety shall:

(1) Assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;

(2) Be in an amount equal to the estimated cost, of the planting required or the amount due for a fund contribution.

(3) Be in a form and of a content approved by the Town.

(4) Remain in force until all mitigation for planting and monitoring requirements have been met.

B. After one growing season, the person required to provide financial surety may request reduction of the amount of the bond or other financial security by submitting a written request to the Town with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met. The Town shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:

(1) The number of acres;

(2) The proposed method of afforestation or reforestation;

(3) The cost of planting materials or replacement materials;

(4) The cost of maintenance of the afforestation or

reforestation project; and

(5) Other relevant factors.

C. If, after two growing seasons, the plantings associated with the afforestation, or reforestation meet or exceed the standards set forth in the Forest Conservation Technical Manual, the amount of the cash, bond, letter of credit, surety bond, or other security shall be returned or released.

D. The financial security may be subject to forfeiture if the person fails to comply with the revocation of a forest conservation plan, an administrative order, or an element of the afforestation or reforestation plan. The Town shall notify the person, by certified mail, of the intention to initiate forfeiture proceedings. The person has 30 days from receipt of the notice of forfeiture to show cause why the financial security may not be forfeited. If the person fails to show cause, the financial security shall be forfeited.

E. A financial security may not be canceled by the issuing entity unless both of the following conditions are satisfied. (1) the issuing entity must notify the Town and the person of its intent to cancel the financial security in writing, by registered mail, not less than 90 days before cancellation. (2) At least 45 days before the cancellation date, the person shall file a substitute security which will be effective on the cancellation date indicated in the notice.

Section XIII Standards for Protecting Trees from Construction Activities.

Standards for the protection of trees from construction activity shall be those provided in the Department of Natural Resources Forest Conservation Technical Manual. Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this article, the applicant shall demonstrate to the Town that protective measures and/or devices have been established.

Section XIV Variances.

14.1 Procedure.

A. An applicant may request a variance from this ordinance or the requirements of Natural Resources Article §§5-1601 –5 -1612, Annotated Code of Maryland, (Amended February 2, 2010) if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

B. An applicant for a variance shall:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- (3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- (4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- (5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- (6) Verify that the granting of a variance will not adversely affect water quality.

C. The Town shall make findings that the applicant has met the requirements in Subsections A and B of this ordinance before a variance may be granted (Amended February 2, 2010).

D. Notice of a request for a variance shall be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

E. There is established by this ordinance the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal concerning an approval of a variance under this ordinance.

Section XV Penalties.

15.1 An applicant found to be in noncompliance with this ordinance, a forest conservation plan, or the associated 2-year maintenance agreement may be assessed by the Town the penalty of 30 cents per square foot of the area found to be in noncompliance with the required forest conservation. Money collected as penalties shall be deposited in a forest conservation fund established by the Town at such time as money is first collected under these penalty provisions. Money collected as penalties may be used by the Town for purposes related to implementing this ordinance or for urban forestry including street tree planting and tree maintenance. (Amended May 4, 2004)

A. In addition to provisions of Subsection A, the Town may serve a written complaint on an alleged violator. The complaint shall identify the violator and the location of the violation, state the provision violated, state the basis of the complaint, and provide an opportunity for a hearing.

B. The Town may issue, at any time, an administrative order requiring the violator to take corrective action within a certain time period. The corrective action may include an order to: (1) stop the violation, (2) stabilize the site, (3) stop all construction work at the site, (4) restore or rectify unlawfully cleared areas, or, (5) submit a written report or plan concerning the violation.

C. A complaint, order or other administrative notice issued by the Town shall be served on the violator personally, on the violator's agent at the site, or by certified mail to the violator's last known address. An order is effective immediately when it is served. Within 10 calendar days of receipt of a complaint, order or notice, the violator may request a hearing, in writing. If a violator has been served with an order for corrective action, the violator may request a stay in conjunction with a request for a hearing. A request for a stay may be heard before or during a hearing on the complaint.

D. The Town may suspend or revoke an approved forest conservation plan for cause, including violation of conditions of the plan, failure to comply with the requirements of an administrative order, obtaining a plan approval by misrepresentation, failing to disclose a relevant or material fact, change in conditions, or failure to post a required bond. The Town shall notify the violator in writing and provide an opportunity for a hearing. The Town must give the violator written notice by certified mail of the specific facts that warrant suspension or revocation.

E. On receipt of written notice to suspend or revoke a forest conservation plan, the violator has 10 calendar days to request a contested case hearing. If the Town does not receive a request for a hearing, the forest conservation plan shall be suspended or revoked.

15.2 In addition to the provisions of Section 15.1, an applicant who violates a provision of the ordinance is liable for a penalty not to exceed \$1,000, which may be

recovered in a civil action brought by the Town. Each day a violation continues is a separate violation. The Town may seek an injunction requiring the applicant to cease the violation and take corrective action to restore or reforest an area.

15.3 The Town may order the immediate suspension of a forest conservation plan if the Town finds that the public health, safety or welfare requires the emergency action. The Town shall promptly give the violator written notice that the emergency has been taken. The notice shall contain the specific facts on which the emergency suspension is based and allow the violator an opportunity to be heard.

Section XVI Annual Report.

16.1 On or before July 1 of each year, the Town shall submit to the Senate Economic and Environmental Matters Committee a report on:

A. The number, location and type of projects subject to the provisions of this ordinance;

B. The amount and location of acres cleared, conserved and planted in connection with a development project;

C. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and

D. The costs of implementing the Forest Conservation Program.

E. The size, location, and protection of any local forest mitigation banks which are created under a local or state program; (Amended February 2, 2010)

F. The number, location and type of violations and type of enforcement activity conducted in accordance with this subtitle; and (Amended February 2, 2010)

G. To the extent practicable, the size and location of all conserved and planted forest areas, submitted in an electronic geographic information system or computer aided design format. (Amended February 2, 2010).

Section XVII Biennial Review By the Department of Natural Resources.

17.1 The Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

Section XVIII Effective Date and Subsequent Amendments.

18.1 This ordinance is hereby enacted and becomes effective May 4, 2004. This ordinance may be amended as required. All amendments to this ordinance are subject to the approval of the Maryland Department of Natural Resources.

Adopted:	May 4, 2004
Corrected:	August 3, 2004
Amended:	February 7, 2006
Effective:	February 28, 2006
Amended:	February 2, 2010
Amended:	May 3, 2011
Effective:	March 1, 2010