

Chapter 1-21

ARTICLE I. IN GENERAL

Section 1-21-1 TITLE

This chapter shall be known and cited as the FOREST RESOURCE ORDINANCE of Frederick County, Maryland.

Section 1-21-2 AUTHORITY

This Chapter is established in accordance with the provisions of the Natural Resources Article 5-1603.

Section 1-21-3 JURISDICTION

The provisions of this Chapter shall apply to all unincorporated lands within the territorial limits of the County.

Section 1-21-4 INTENT

This Chapter is adopted with the intent that new development in the County take place in such a way that the conservation, protection and planting of trees to produce forested areas will help accomplish the following: A) stabilization of soil by the prevention of erosion and sedimentation; B) reduction of stormwater runoff and the potential damage it may create; C) removal of pollutants from the air and assistance in the generation of oxygen; D) creation of buffers and screens against noise pollution; E) control of drainage and restoration of denuded soil subsequent to construction or grading; F) creation of protected environments for birds and other wildlife; G) creation of shade and shelter for the people, thus mitigating heat islands; H) protection and enhancement of property values; I) conservation and enhancement of the County's physical and aesthetic appearance; and J) protection of the public health and safety, as well as the general welfare.

ARTICLE III – PLAN REQUIREMENTS

Section 1-21-30 PLANS IN GENERAL

- A. All required plans 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.
- B. When an Applicant is proposing a minor subdivision (5 lots or less) or a site plan, a Combined Preliminary/Final Forest Conservation Plan may be submitted. Also, the Forest Stand Delineation Plan may be submitted simultaneously with the Forest Conservation Plan for all minor subdivision

- proposals and for any site plan proposals.
- C. A Combined Preliminary/Final Forest Conservation Plan shall contain all requirements of both the Preliminary and Final Forest Conservation Plan requirements.
 - D. All Forest Stand Delineation and Forest Conservation Plans submitted to the Department shall use methods approved by the Department, as provided in the Forest Conservation Technical Manual, to protect retained forests and trees during construction.
 - E. If a local agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.010–G shall apply.

Section 1-21-31 FOREST STAND DELINEATION PLAN

- A. A Forest Stand Delineation Plan shall be submitted simultaneously with a preliminary subdivision plan, a site plan, or, grading permit application, whichever is submitted first, but before a sediment control application is submitted for the lot or parcel being developed, whichever is applicable.
- B. The delineation plan 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 (erodibility factor) greater than 0.35 on slopes on 15 percent or more;
 - 3. Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;
 - 4. 100-year floodplains as described in the Flood Insurance Rate Maps published by the Federal Emergency Management Agency and verified by field inspection; and
 - 5. Other information the Department determines is necessary to implement this Ordinance.
- C. If approved by the Department, a Simplified Delineation Plan may be submitted for an area:
 - 1. When no forest cover is disturbed during a construction activity; and
 - 2. Designated to be under a long term protective agreement.
- D. The Department shall consider a Simplified Forest Stand Delineation Plan complete if it includes:
 - 1. All requirements under Section 1-21-31B (1 and 4) of this article;
 - 2. A map showing existing forest cover as verified by field inspection; and
 - 3. Other information required by the Department.
- E. An approved forest stand delineation plan may remain in effect for a period not longer than 5 years.
- F. Time for Submittal.
 - 1. Within 30 calendar days after receipt of the Forest Stand Delineation Plan, the Department shall notify the Applicant at its regularly scheduled TAC meeting as to whether the Forest Stand

Delineation Plan is complete and correct. If the applicant is not notified, the plan shall be treated as complete and correct.

2. The Department may require further information or extend its time for review and notification for an additional 15 calendar days under extenuating circumstances.

Section 1-21-32 FOREST CONSERVATION PLAN – IN GENERAL

- A. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:
 1. How techniques for forest retention have been exhausted;
 2. Why the priority forests and priority areas specified in Natural Resources Article, Sec. 5-1607(c), Annotated Code of Maryland, cannot be left in an undisturbed condition;
 3. If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland; and
 4. Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland.
- C. If an Applicant proposes to make a payment into the local Forest Conservation Fund instead of afforestation or reforestation, then the Applicant shall demonstrate to the satisfaction of the Department that the requirements for afforestation or reforestation cannot be reasonably accomplished on site or offsite.
- D. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Natural Resources Article, Sec. 8-1201–1211, Annotated Code of Maryland, afforestation is planned;
 5. Include an anticipated construction timetable showing the sequence for forest conservation procedures;
 6. Include when applicable an afforestation or reforestation plan prepared by a qualified professional, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 7. Show the planned limits of disturbance;
 8. Show planned stockpile areas;
 9. Incorporate a commitment to complete all required afforestation and reforestation within 2 (two) full growing seasons or 1 (one) year after development project completion.
 10. Include other information the Department determines is necessary to implement this Ordinance.
 11. Be reviewed concurrently with the review of the preliminary subdivision plan or the site plan, which ever is applicable.
 12. Include an explanation as to how the provisions of this ordinance have been met.

Section 1-21-34 THE FINAL FOREST CONSERVATION PLAN

- A. A Final Forest Conservation Plan shall:
1. Be submitted with the following:
 - a. A final subdivision plat;
 - b. An application for a grading permit; or
 - c. As a Combined Preliminary/Final Forest Conservation Plan with a minor subdivision plat or a site plan.
 2. Include a map of the site drawn at the same scale as the grading or final subdivision plan; and
 3. Include all the information required under Section 32, except as expressed in Subsection C of this Section.
- B. Time for submittal:
1. Within 45 calendar days after receipt of the Final Forest Conservation Plan, the Department shall notify the Applicant whether the forest conservation plan is complete and approved. If the Applicant is not notified, the plan shall be treated as complete and correct.
 2. The Department may require further information and extend its time for review and notification for an additional 15 calendar days under extenuating circumstances.
- C. The Department's review of a Final Forest Conservation Plan shall be concurrent with the review of the final subdivision plan, grading permit application, or sediment control application associated with the project. In the case of a major subdivision plan, (where an Applicant has an approved Preliminary Forest Conservation Plan, and no changes are made), the necessary forest easements and notes may be drawn directly on the Final Subdivision Plat and/or improvements plans in lieu of submitting a separate Final Forest Conservation Plan. These notes should include the following:
1. Locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation;
 2. A binding 2-year maintenance agreement that details how the areas designated for afforestation or reforestation will be maintained to ensure protection or satisfactory establishment, including:
 - a. Watering, and
 - b. A reinforcement planting provision is survival rates fall below required standards, as provided in the Frederick County Forest Conservation Technical Manual;
 3. A binding protective agreement as specified on COMAR 08.19.05.02 that:
 - a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention;
 - b. Limits uses in areas of forest conservation to those uses that are consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest; and
 - c. Incorporates conservation easements, deed restrictions, covenants, and other agreements as necessary.
- D. If a forest conservation plan is required by this Ordinance, a person may not cut, clear, or grade on the development site until the Department has approved the final plan or the person will be in violation of this chapter.
- E. The final plan cannot be altered without expressed written approval from the Department.

- F. The Department may revoke approval for a forest conservation plan if it finds that:
 - 1. A provision of the plan has been violated;
 - 2. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
 - 3. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.
- G. Prior to revoking approval of a forest conservation plan, the Department shall notify the developer in writing and provide an opportunity for a hearing before the Planning Commission.

ARTICLE IV – DESIGN CRITERIA

Section 1-21-40 RETENTION AND CONSERVATION PRIORITIES

- A. The following trees, shrubs, plants, and specific areas shall be considered high priority for retention and protection and shall be left in an undisturbed condition and the Applicant must demonstrate, to the satisfaction of the Department, that reasonable efforts have been made to protect them:
 - 1. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, streams and their buffers, steep slopes (25 percent), and critical habitats, and wetlands;
 - 2. Contiguous forest that connects large undeveloped or heavily vegetated tracts of land within and adjacent to the site;
 - 3. Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the United States Fish and Wildlife Service or the State of Maryland Department of Natural Resources;
 - 4. Trees that:
 - a. Are part of a historic site;
 - b. Are associated with a historic structure; or
 - c. Have been designated by the State or the Department as a national, state, county, or municipal champion tree; and
 - 5. Trees having a diameter measured at 4.5 feet above the ground of:
 - a. 30 inches or more; or
 - b. 75 percent of the diameter, measured at 4.5 feet above the ground of the current State, County, or municipal champion tree of that species as designated by the State of Maryland Department of Natural Resources, or the County, or the Municipality.
- B. The preferred priorities for forest conservation, after techniques for retaining existing forest on the site have been exhausted, are as follows:
 - 1. Selective clearing and supplemental planting on site;
 - 2. Onsite afforestation, or reforestation, 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 afforestation, or reforestation, using whip and seeding stock;
 - 4. Landscaping of areas under an approved landscaping plan which establishes a forest that is at

- least 35 feet wide and covering 2,500 square feet of area; and/or landscape credits expressed in Section 1-21-45;
5. Offsite afforestation, or reforestation, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
 6. Offsite afforestation, or reforestation, using whip and seedling stock;
 7. Natural regeneration onsite; and
 8. Natural regeneration offsite.
- C. A sequence other than the one described in Section B of this Section may be used for a specific project, if necessary, to achieve the objectives of the County land use plan or County land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.
- D. The following shall be considered a priority for afforestation and reforestation to:
1. Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet, and when afforestation occurs offsite, especially on Agriculturally zoned or used land.
 2. Establish or enhance forested areas in 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 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 where 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.
- E. Work must be completed within one (1) year or 2 growing seasons, whichever is greater, following completion of final site grading.

Section 1-21-41 AFFORESTATION AND AFFORESTATION THRESHOLD

“Afforestation” under this section means the planting of trees where no or little forest exists on the site, in order to meet certain thresholds. A person making application after the effective date of this Ordinance for subdivision approval, site plan, or a grading permit, for an area of land of 40,000 square feet or more:

- A. Shall 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 to at least 20 percent of the net tract area for the following zoning categories:
 - a. Agriculture and conservation zones; and
 - b. R-1 residential zones;
 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 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 unit development zones; and
 - d. Commercial and industrial use zones.
- B. Shall comply with the following when cutting into forest cover that is currently below these afforestation percentages.
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.

Section 1-21-42 REFORESTATION AND CONSERVATION THRESHOLD

“Reforestation” under this section means the planting of tree to replace forest which has been recently removed.

- A. In addition to the Afforestation Threshold, there is a Forest Conservation Threshold established for each zoning category, 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 ¼ acre planted for every acre removed to a ratio of 2 acres planted for every acre removed.
- B. After every reasonable effort to minimize the cutting or clearing of trees and other woody plants has 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 formula provided in Section C of this Section and consistent with the following Forest Conservation Threshold for the applicable zoning category:

Category of Use	Threshold Percentage
(1) Agricultural and Conservation Zone	50 percent
(2) R-1 Residential Zoned areas	25 percent
(3) Institutional use areas in any zone	20 percent
(4) R-3, R-5, R-8, R-12, R-16 and Mobile Home Park zoned areas	20 percent
(5) Mixed use and Planned Unit Development Zoned areas	15 percent
(6) Commercial and industrial use zoned areas	15 percent

- C. Calculations.
1. If the percentage of forest cover remaining on the net tract area after cutting or clearing are

completed equals or exceeds the threshold established by subsection B of this Section, the site shall be reforested at a ratio of ¼ acre planted for ever acre removed.

2. Each acre of forest retained on the net tract area above the threshold shall be credited against the total number of acres required to be reforested under Subsection (1) of this Section. The Calculation of the credit shall be according to the criteria provided in the Frederick County Forest Conservation Technical Manual.
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 1-21-43 RECOMMENDED TREE SPECIES

- A. Tree species used for afforestation or reforestation shall be native to the County, when appropriate, and selected from a list of approved species established by the Maryland Department of Natural Resources. This list shall be placed in the Frederick County Forest Conservation Technical Manual.

Section 1-21-44 STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES

- A. Frederick County shall adopt standards for the protection of trees from construction activity that are at least as effective as the standards provided in the Maryland Department of Natural Resources Forest Conservation Manual. These standards shall be listed in the Frederick County Forest Conservation Technical Manual.
- B. Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by the Ordinance, the developer shall demonstrate to the Department of Public Works that the protective devices have been established.

Section 1-21-45 LANDSCAPE CREDITS

Landscaping or street trees not in forest settings will be credited towards afforestation or reforestation requirements at a rate of ¼ of an acre credit for each are of canopy cover of the landscaping or street trees at their expected 20 year growth.

**Sections 1-21-24 to 1-21-25:
“Payment in Lieu of Reforestation”;
“Guarantee for Reforestation”**

Section 1-21-24 PAYMENT IN LIEU OF REFORESTATION

- A. There is hereby created a Frederick County Forest Conservation Fund.
- B. An Applicant required by Section 1-21-41 or 1-21-42 of this Ordinance to conduct reforestation may make a payment to the Frederick County Forest Conservation Fund of \$0.30 per square foot of the area of required planting upon determination by the Department, based on the Applicant's demonstration that reforestation or afforestation cannot reasonably be accomplished by the Applicant onsite or offsite.
- C. Money contributed in lieu of reforestation under this Subsection shall be paid prior to the release of other surety held by the County for grading.
- D. The County shall accomplish the reforestation for which the money is deposited within 2 (two) growing seasons after receipt of the money, after which any or all monies not spent shall be returned to the Applicant, upon written request.
- E. Money contributed under this Section:
 - 1. May be used only for reforestation and afforestation, including site identification, acquisition, preparation, and maintenance;
 - 2. Shall be deposited in a separate forest conservation fund; and
 - 3. Shall not revert to the general fund.
- F. Sites for afforestation or reforestation using fund money will be sought in the county and watershed in which the original project is located, but if this cannot be reasonably achieved, the monies may be used to accomplish afforestation or reforestation anywhere in the County or the state.

Section 1-21-25 GUARANTEE FOR REFORESTATION

- A. Persons required to conduct reforestation or afforestation under this Ordinance shall furnish to the County surety in the form of a guarantee, an irrevocable letter of credit, or other security approved by DPW and the County Attorney's Office. The surety shall:
 - 1. Assure that the reforestation and associated management plan are conducted and maintained in accordance with the approved forest conservation plan;
 - 2. Be in the amount equal to the estimated cost, as determined by the developer; and, approved by the Department.
 - 3. Be in a form and of a content approved by the County Attorney.
- B. If after 1 (one) complete growing season the planting associated with the reforestation meets or exceeds the standards of the Frederick County Forest Conservation Technical Manual, 50 percent of the amount of any cash bond that has been posted shall be returned. If the surety has been given in the form of a letter of credit, or another form of surety, the County shall notify the appropriate entity that liability has been reduced by 50 percent.
- C. If after 2 (two) complete growing seasons the planting associated with the reforestation meets or exceeds the standards of the Frederick County Forest Conservation Technical Manual, the remaining amount of the cash bond, letter of credit, or other surety, shall be returned or released.

