

CECIL COUNTY
MARYLAND

FOREST CONSERVATION REGULATIONS

Adopted: December 2, 1992

Effective: January 1, 1993

Amended: July 16, 2002	<u>Articles</u> II, III, VI, VIII, IX, X-1, X-2, XX Technical Manual: Pages 32 and A-10
October 20, 2009	III, VI, VII, X
June 17, 2014	2.58, 3.2(Q) and 3.2(R)

Board of County Commissioners for Cecil County:

W. Edwin Cole, Jr.

A. Marie Cleek

Grayson L. Abbott, Jr.



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 A. MARIE CLEEK
 2ND COMMISSIONER DISTRICT
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 3RD COMMISSIONER DISTRICT

THE BOARD OF COUNTY COMMISSIONERS
 OF CECIL COUNTY
 129 EAST MAIN STREET, ROOM 101
 ELKTON, MARYLAND 21921-5970

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RESOLUTION OF ADOPTION

WHEREAS, pursuant to Sections 5-1601 through 5-1612 of the Natural Resources Article, the Cecil County Office of Planning and Zoning has prepared Forest Conservation Regulations and a Forest Conservation Technical Manual; and

WHEREAS, the Cecil County Planning Commission held a required public hearing on November 16, 1992, on the proposed Forest Conservation Regulations and Forest Conservation Technical Manual; and


WHEREAS, the Planning Commission recommended approval of said documents; and

WHEREAS, the Board of County Commissioners held a public hearing on December 2, 1992, on said regulations and technical manual; and

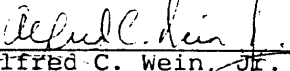
WHEREAS, the Maryland Department of Natural Resources grants approval of the Cecil County Forest Conservation Regulations and Cecil County Forest Conservation Technical Manual upon the date of adoption by the Board of County Commissioners.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Cecil County, Maryland, that the Forest Conservation Regulations and Forest Conservation Technical Manual are hereby adopted this 9th day of December, 1992, to take effect January 1, 1993.

ATTEST:



 Edward L. Sealover
 County Administrator

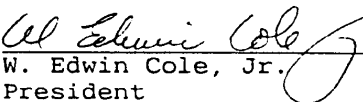


 Alfred C. Wein, Jr.
 Director, Planning & Zoning

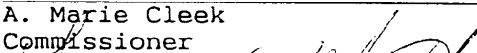


 Gary A. Griffith
 Chairman, Cecil County
 Planning Commission

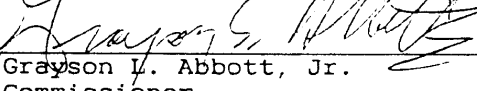
BOARD OF COUNTY COMMISSIONERS
 OF CECIL COUNTY



 W. Edwin Cole, Jr.
 President



 A. Marie Cleek
 Commissioner



 Grayson L. Abbott, Jr.
 Commissioner

CECIL COUNTY FOREST CONSERVATION REGULATIONS

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FOREST CONSERVATION REGULATIONS

Severability

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid such decision shall not affect the validity of these regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

Article I Purpose

1.1 Purpose.

The following regulations have been developed for the purpose of implementing a Forest Conservation Program required under Natural Resources Article, Sections 5-1601 through 5-1612, Annotated Code of Maryland. Regulations are set for the cutting, clearing, or grading of forested areas which are proposed to undergo land use change. Regulations are also set for the restoration of degraded or long-absent forest environments in an effort to enhance the quality of life of the citizens of Cecil County both current and future. The Cecil County Forest Conservation Regulations seek to protect from disturbance those forested areas of Cecil County which exhibit functions and features necessary for the health and welfare of the citizens of Cecil County by retaining a healthy and ecologically diverse environment.

Article II Forest and Tree Conservation Definitions

Within these regulations 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 Cecil County 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 designated or regulated for densities of less than or equal to one dwelling unit per three acres.
- 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 the county in which the property is located and,
 - B. Which operates as a protective agreement for afforested or reforested lands, and for forest conservation on lands retained under Section 7.2 of these regulations.
- 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 state or county.
- 2.8 *(Deleted on July 16, 2002)*
- 2.9 “Commercial and industrial uses” are those uses allowed under the commercial and industrial zoning categories of the Cecil County Zoning Ordinance, or defined as such by the Cecil County Zoning Administrator, excluding those uses specifically defined in 2.29 of this article.
- 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 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.
 - C. Constitute habitat of the species which is considered critical under the Natural Resource Article, Sections 4-2A-04 and 10-2A-06, 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 Resource Article, Sections 4-2A-04 and 10-2A-06, Annotated Code of Maryland.
- 2.13 “Declaration of intent” means:
- A. A signed and witnessed statement by a landowner or the landowner’s agent certifying that the activity of the landowner’s property:
 - (1) Is for certain activities exempted under these regulations,
 - (2) Does not circumvent the requirements of these regulations, and
 - (3) Does not conflict with the purposes of any other declaration of intent;or
 - B. The document required under Section 3.2 of these regulations.
- 2.14 “Department” means the Cecil County Office of Planning & Zoning.
- 2.15 Development Project.
- A. “Development Project” means a regulated activity occurring on a specific tract that is 40,000 square feet or greater.
 - B. “Development project” includes redevelopment.
- 2.16 “Development project completion” means, for the purposes of afforestation, reforestation, or payment into a fund the occurrence of one of the following:
- A. The release of the development bond, if required; or
 - B. Acceptance of the project’s streets, utilities, and public services by the Department of Public Works of Cecil County; or
 - C. Recordation of a subdivision project, or
 - D. Designation by the Department that a:
 - (1) Development project has been completed, or
 - (2) 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.
 - B. “Forest” 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.

C. "Forest" does not include orchards.

- 2.18 "Forest Conservancy District Board" means the forestry board created for each State forest conservancy district under Natural Resources Article, §§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 Department.
- 2.20 "Forest Conservation and Management Agreement" means an agreement as stated in the Tax-Property Article, §8-211, Annotated Code of Maryland.
- 2.21 "Forest Conservation Technical Manual" means the technical manual originally adopted by the Board of County Commissioners, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.
- 2.22 "Forest conservation plan" means a plan designed to protect or reestablish forest cover and approved pursuant to Article VI of these regulations.
- 2.23 "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 each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.
- 2.24 "Forest cover" means the area of a site meeting the definition of forest.
- 2.25 "Forest management plan" means a plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.
- 2.25-1 "Forest mitigation bank" means an area of land which has been intentionally reforested or afforested for the express purpose of providing credits for reforestation requirements
- 2.25-2 "Forest mitigation bank agreement" means an agreement entered into by an individual owning a forest mitigation bank and the Department which commits the banker to certain procedures and requirements when creating and operating the forest mitigation bank.
- 2.25-3 "Forest mitigation bank plan" means a plan submitted for approval of a forest mitigation bank to the Department by an individual proposing to establish a forest mitigation bank.
- 2.26 "Forest stand delineation" means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Cecil County Forest Conservation Technical Manual.

- 2.27 “Growing season” means the period of consecutive frost-free days as stated in the current soil survey for this county published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a) – (f).
- 2.28 “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.
- 2.29 “Institutional development area” means schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas and buildings, parks, post offices, cemeteries, and churches and other religious establishments.
- 2.30 “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.
- 2.31 “Landscaping plan” means a plan:
- A. 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;
 - B. Using native or indigenous plants when appropriate; and
 - C. Which is made part of an approved forest conservation plan.
- 2.31-1 “Linear project” is a project which:
- 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.
- 2.32 “Local agency” means each unit in the executive, legislative, or judicial branch of a county or municipal government, including an office or department of public works.
- 2.33 “Lot” means a unit of land, the boundaries of which have been established by subdivision of a larger parcel, and which will not be the subject of further subdivision without an approved forest stand delineation and forest conservation plan.
- 2.34 “Management agreement” means the short-term protective agreement associated with afforestation or reforestation plans required under Article VI of these regulations.
- 2.35 “Medium density residential areas” means areas regulated for densities greater than 1 dwelling unit per 3 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.

- 2.36 “Minor development project” means a project on less than 5 acres of land containing not more than 4 lots per acre.
- 2.37 “Mixed use development” means a single, relatively high density development project, usually commercial in nature, which includes two or more types of uses, and is permitted by the Cecil County Zoning Ordinance.
- 2.38 “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.
- 2.39 “Net tract area” means:
- A. Except in agriculture and resource areas the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by the area found to be within the boundaries of the 100-year floodplain; and
 - B. In agriculture and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain.
 - C. For a linear project:
 - 1) The area of a right-of-way width, new access roads, and storage; or
 - 2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.
- 2.40 Nontidal wetlands.
- A. “Nontidal wetlands” means an area that is:
 - (1) 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
 - (2) Considered a nontidal wetland in accordance with the delineation methodology used and approved by the Department of Natural Resources and the United States Army Corps of Engineers; and
 - (3) Regulated under COMAR 08.05.04
 - B. “Nontidal wetlands” does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.
- 2.41 “Offsite” means outside of the boundaries of the area encompassed by the tract, or lot.
- 2.42 “Onsite” means within the boundaries of the area encompassed by the tract or lot, including an area classified as a 100-year floodplain.
- 2.43 “100-year flood” means a flood which has a 1 percent chance of being equaled or exceeded in any given year.

- 2.44 “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. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.
- 2.45 “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.
- 2.46 “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.
- 2.47 “Planned unit development” means a form of development comprised of a combination of land uses or varying intensities of land use in accordance with an integrated plan and unified site design that is intended to provide flexibility in land use design with at least 20 percent of the land permanently dedicated to open space and is developed in accordance with the Planned Unit Development guidelines set forth in the Cecil County Subdivision Regulations and Cecil County Zoning Ordinance.
- 2.48 “Project plan” means a construction, grading, or sediment control activity on a tract of 40,000 square feet or greater, by a local or State agency.
- 2.49 “Public utility” means any:
- A. Transmission line or electric generating station; or
 - B. Water, sewer, electric, gas, telephone, or television cable service line.
- 2.50 “Reforestation.”
- A. “Reforestation” or “reforested” means the:
 - (1) Creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre planted on areas recently cleared, cut, or graded, and
 - (2) Establishment of a forest according to procedures set forth in the Cecil County Forest Conservation Technical Manual.
 - B. “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.
- 2.51 “Regulated activity” means any of the following activities, when that activity occurs on a tract 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.

- 2.52 “Retention” means the deliberate holding and protecting of existing trees, shrubs, or plants on site according to established standards as provided in the Cecil County Forest Conservation Technical Manual.
- 2.53 “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.
- 2.54 “Seedling” means an unbranched woody plant, less than 24 inches in height and having a diameter of less than ½ inch measured at 2 inches above the root collar.
- 2.55 “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.
- 2.56 “Site plan” means a drawing or plat which describes and locates required improvements of a development tract in accordance with the provisions of Section 4.17 of the Cecil County Zoning Ordinance.
- 2.57 “Stream buffer” means all lands lying within 110 feet, measured from the top of each normal bank, of a perennial stream or 50 feet from an intermittent stream.
- 2.58 “Stream Restoration Project” means an activity that:
- A. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;
 - B. Avoids and minimizes impacts to forest and provides for replanting on-site an equivalent number of trees to the number removed by the project;
 - C. May be performed under a Municipal Separate Storm Sewer System permit, a Watershed Implementation Plan Growth Offset, or another plan administered by the State or Local Government to achieve or maintain water quality standards; and
 - D. Is not performed to satisfy Stormwater Management, Wetlands Mitigation, or any other regulatory requirement associated with proposed development activity.
- 2.59 “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, rent, or development.
- 2.60 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.
 - B. “Timber harvesting” does not include grubbing and clearing of root mass.
- 2.61 “Tract” means property or unit of land subject to an application for a regulated activity.

- 2.62 “Tract for a planned unit development” means the entire property subject to a planned unit development.
- 2.63 “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.
- 2.64 Variance.
A. “Variance” means partial relief for these regulations.
B. “Variance” for the purposes of these regulations does not mean a zoning variance.
- 2.65 “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.
- 2.66 “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.

Article III Application

- 3.1 Except as provided in Section 3.2 of this article, these regulations apply to:
- A. A person making application for a subdivision, site plan approval, project plan, grading permit, or sediment control permit on tracts of land 40,000 square feet or greater.
 - B. A public utility not exempt under Section 3.2E and F of this article.
- 3.2 These regulations do not apply to:
- A. Highway construction activities under Natural Resources Article §5-103, Annotated Code of Maryland.
 - B. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, §§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, §8-211, Annotated Code of Maryland, that are completed:
 - 1) Before July 1, 1991; or
 - 2) After July 1, 1991 on property which:
 - a) is not the subject of application for a grading permit for development within 5 years after the logging or harvesting operation, and
 - b) Is the subject of a declaration of intent as provided for in Section 3.3 of this article, and approved by the Department.
 - D. Agricultural activities including agricultural support buildings and other related structures built using accepted 'best management practices,' provided less than 40,000 square feet of forest is disturbed. An agricultural activity involving the clearing, cutting, or disturbing of more than 40,000 square feet of forest in a one year period must file 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 execution of the declaration of intent; 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 licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland or land for electric generating stations licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland, if:
 - 1) Required certificates of public convenience and necessity have been issued in accordance with

Natural Resources Article, §5-1603(f), Annotated Code of Maryland;
and

- 2) Cutting or clearing of the forest is conducted to minimize the loss of forest
- F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland.
- 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 these regulations;
or
 - 2) The right-of-way's initial construction was approved under these regulations.
- H. A residential construction activity conducted on a single lot of any size existing prior to January 1, 1993, or a linear project not otherwise exempted under this ordinance, if the activity;
- 1) Does not result in the cumulative cutting, clearing or grading of more than 20,000 square feet of forest;
 - 2) Does not result in the cutting, clearing or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under these regulations;
 - 3) Is the subject of a declaration of intent filed with the Department, 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, including subdivision, 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 square feet of forest; and
 - 2) Is the subject of a declaration of intent filed with the Department, as provided for in Section 3.3 of this article, which states that transfer of ownership may result in a loss of exemption; and
 - 3) Is conducted pursuant to requirements of the Cecil County Subdivision Regulations and the Cecil County Zoning Ordinance.
 - 4) This exemption shall not apply to properties for which title is held by an incorporated business, limited liability company (LLC), or other business entity.

- L. A subdivision which has received preliminary approval or a grading or sediment control plan approved before July 1, 1991.
- M. A planned unit development that, by December 31, 1991, has:
 - 1) Met all requirements for planned unit development approval; and
 - 2) Obtained preliminary plan approval by the Cecil County Planning Commission.
- N. Resubdivision, add-on, subtraction, agricultural transfer, title transfer or other Real Estate transfer to provide security, leasehold or other legal or equitable interest, provided:
 - 1) This action does not involve new development or redevelopment with associated land disturbance activities; and
 - 2) Both the grantor and grantee file a declaration of intent, as provided for in Section 3.3 of this article; and
 - 3) The transfer is permitted pursuant to the Cecil County Subdivision Regulations and the Cecil County Zoning Ordinance.
- O. Surveys necessary for the location of property lines or other points necessary for the preparation of submittal material.
- P. The cutting or clearing of trees to comply with the requirements of 14C.F.R. 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.
- Q. Maintenance or retrofitting of a Stormwater Management structure that may include clearing of vegetation or removal and trimming of trees, if the maintenance or retrofitting is within the original limits of disturbance for construction of existing structure, or within any maintenance easement for access to the structure; or
- R. A Stream Restoration Project, as defined in Article II. 2.58 of this ordinance, for which the applicant for a Grading or Sediment Control Permit has executed a binding maintenance agreement of at least five years with the affected property owner or owners.

3.3 Declaration of Intent

- A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Section 3.2 of these regulations.
- 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 Department.
- 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 as in Section 3.2.
- E. If a regulated activity occurs on the area covered by the declaration of intent within 5 years of the effective date of the declaration of intent:
- 1) There shall be an immediate loss of exemption;
 - 2) There may be noncompliance action taken by the Department, as appropriate, under these regulations.
- 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 these regulations are satisfied.
- G. The Department shall 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 these regulations and the Cecil County Forest Conservation Technical Manual; or
 - 2) Pay a noncompliance fee of \$1.00 per square foot of forest cut or cleared under the declaration of intent; or
 - 3) Be subject to other enforcement actions appropriate under Article XVI of these regulations; or
 - 4) File a declaration of intent with the Department if activity in question is found to meet the exemption requirement as outlined in Section 3.2.
- H. In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of these Regulations.

Article IV General Requirements

- 4.1 Unless exempt under the provisions of 3.2 above a person making application after the effective date of January 1, 1993, for subdivision, site plan approval, local agency project plan approval, a grading permit, or a sediment control permit for a tract of land 40,000 square feet or greater shall:
 - A. Submit to the Department 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 Department, as provided in the Cecil County 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.

Article V Forest Stand Delineation

- 5.1 Criteria.
- A. A forest stand delineation shall be submitted for all regulated activities not exempt under Section 3.2 of these regulations.
 - B. A standard forest stand delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in Article XVIII of these regulations.
 - C. The standard forest stand delineation shall be used during the initial stages of subdivision or project plan approval, before a grading permit application, or before a sediment control application is approved for the tract being developed in order to determine the most suitable and practical areas for forest conservation. The delineation shall contain the information required by the Cecil County Forest Conservation Technical Manual and any other information the Department determines is necessary to implement these regulations.
 - D. Simplified Forest Stand Delineations
 - 1) A simplified forest stand delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in Article XVIII of these regulations.
 - 2) A simplified forest stand delineation may be submitted for forested areas placed in open space:
 - a) Which propose no disturbance to existing forest cover within that area; and
 - b) Which place the entire forested area for which the simplified delineation was conducted under a long term protective agreement.
 - c) Which reserve the open space for passive recreational use or uses compatible with forest conservation.
 - 3) A simplified forest stand delineation shall consist of the information required in the Cecil County Forest Conservation Technical Manual and any other information the Department determines is necessary to implement these regulations.
 - 4) A simplified forest stand delineation may be submitted with a preliminary forest conservation plan.
 - 5) A simplified delineation may be submitted for minor development projects as defined in Section 2.36 of these regulations.
 - E. An approved forest stand delineation shall remain in effect for a period not longer than 5 years.
 - G. Time period for review.
 - 1) Within 30 calendar days after receipt of the forest stand delineation, the Department shall

notify the applicant whether the forest stand delineation is complete and correct.

- 2) If the Department fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
- 3) The Department may require further information or provide for an additional 15 calendar days under extenuating circumstances. In such cases the Department shall notify the applicant at least 5 days prior to the 30 day deadline.

Article VI Forest Conservation Plan

6.1 General Provisions.

- 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 a site which is 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 Sections 7.2 and 7.2-1 of these regulations cannot be left in an undisturbed condition;
 - a) If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Article IX of these regulations; and
 - b) Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article 5-1607, Annotated Code of Maryland
 - 3) How the disturbance to the priority forests and priority areas specified on the forest stand delineation and/or forest conservation plan qualifies for a variance.
- C. The applicant shall demonstrate to the satisfaction of the Department of Natural Resources, Forestry Programs, that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the State forest conservation fund or to purchase credits from a forest mitigation bank.
- 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, Sections 8-1201 – 1211, Annotated Code of Maryland and COMAR 08.05.04 is subject to both the nontidal wetlands regulatory requirements and the requirements of these regulations, conditioned on the following:
 - 1) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained shall be counted towards forest conservation requirements under these regulations.
 - 2) Nontidal wetlands shall be considered to be priority areas for retention and replacement.
 - 3) For the purpose of calculating reforestation mitigation under these regulations, a forested nontidal wetland permitted to be cut or cleared

and required to be mitigated under COMAR 08.05.04 shall be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

4) Forested nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the nontidal wetlands and to avoid delay in the approval process.

6.2 Preliminary Forest Conservation Plan.

- A. A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Article XIX of these regulations.
- B. A preliminary forest conservation plan shall be prepared in accordance with the guidelines established in the Cecil County Forest Conservation Technical Manual and:
 - 1) Be submitted with the preliminary plan of subdivision or proposed project plan;
 - 2) Include an explanation of how the provisions of Section 6.1 of this article have been met;
 - 3) Include information required in the Cecil County Forest Conservation Technical Manual; and
 - 4) Include other information the Department determines is necessary to implement these regulations.
- C. The review of the preliminary forest conservation plan shall be concurrent with the review of the site plan, or the review of the preliminary subdivision plat.
- D. During the different stages of the review process, the preliminary forest conservation plan may be modified provided the Department approves of the changes.

6.3 The Final Forest Conservation Plan.

- A. A final forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Article XVIII of these regulations.
- B. A final forest conservation plan shall:
 - 1) Be submitted with the following:
 - i. A final subdivision plan,
 - ii. A final project plan,
 - iii. A site plan,
 - iv. An application for a grading permit, or
 - v. An application for a sediment control permit;
 - 2) Include the substantive elements required under Section 6.2B of this article with any necessary amendments to the preliminary forest conservation plan as finalized elements of the forest conservation plan; and

- 3) Includes other information the Department determines is necessary to implement these regulations.

C. Time period for review.

- 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.
- 2) If the Department fails to notify the applicant within 45 days, the plan shall be treated as complete and approved.
- 3) The Department may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances. The applicant shall be notified of the necessary extension at least 5 days prior to the end of the 45 day deadline.
- 4) At the request of the applicant, the Department may extend the deadline under extenuating circumstances.

D. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision plan, site plan, project plan, grading permit application, or sediment control application associated with the project.

E. The Department may revoke an approved 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.

F. The Department may issue a stop work order against a person who violates a provision of this ordinance or a regulation, order, approved forest conservation plan, or maintenance agreement.

G. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing

Article VII Afforestation and Retention

7.1 Afforestation Requirement. Except for activities exempted in Section 3.2 of these regulations, a person making application after the effective date of these regulations for subdivision, site plan or project plan approval, a grading permit, or a sediment control permit for a tract involving 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 acreage 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. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Section 7.1(A)(1) and (2) of this article:
 - 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 Department, that reasonable efforts have been made to protect them and the plan cannot be reasonable altered:

- A. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial stream 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 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 Department, that the applicant qualifies for a variance in accordance with Section 14.1 of this article:

- A. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - a. The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 – 1544 and in 50 CFR Part 17;
 - b. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2A-01 – 10-2A-09, Annotated Code of Maryland; and
 - c. COMAR 08.03.08

- B. Trees that:
 - a. Are part of a registered historic site,
 - b. Are associated with a registered historic structure, or
 - c. Have been designated by the State or the Department as a national, state, or county champion tree; and

- C. Any tree, provided that it does not pose an immediate hazard due to disease or insect infestation, having a diameter measured at 4.5 feet above the ground of:
 - a. 30 inches or more; or
 - b. 75% 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 Department of Natural Resources.

- D. Areas classified as having Priority Forest Structure by the Forest Structure Analysis methodology as described in the Cecil County Forest Conservation Technical Manual.

Article 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 article. 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 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, purchase of credits from a forest mitigation bank, or payment into the forest conservation fund, according to the formula set forth in this Subsection and Subsection C of this article and consistent with the approved forest conservation plan developed as per Section 6.1. The following forest conservation thresholds for the applicable land use category:

<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 ¼ 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 towards 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 Cecil 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.

Article 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 Department, is 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 seedling 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 or more of area;
 - 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 on site; and
 - 8) Natural regeneration offsite.
- B. A sequence other than the one described in Subsection A of this article may be used for a specific project, if approved by the Department, 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.
- C. The following are considered a priority for afforestation and reforestation to:
- 1) Establish or enhance forest buffers adjacent to intermittent streams to 50 feet in width and those adjacent to perennial streams to widths of at least 110 feet;
 - 2) Establish or enhance forested 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 between 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 article shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following recordation of the of the approved subdivision plan or final approval of other regulated activities. Where subdivision plans are recorded in sections a schedule shall be agreed upon if all afforestation or reforestation cannot be accomplished at the time of recordation of the first section. This may involve a pro rated amount of reforestation or afforestation in accordance with the above time limits based on the acreage of the section recorded.
- E. Off site afforestation and reforestation may include the use of forest mitigation banks which have been so designated in advance by the Department.

Article X Payment Instead of Afforestation and Reforestation

10.1 Forest Conservation Fund

- A. If a person subject to these regulations believes that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall submit a written request to the Department requesting that payment into the Forest Conservation Fund be allowed.
- B. If there is no local forest conservation fund established, a person may contribute to the State fund. The Department of Natural Resources shall determine when contribution is allowable under COMAR 08.19.02.021.

Article X-1 Payment by Credits From a Forest Mitigation Banks

10.1.1 Use of a Forest Mitigation Bank

A. If a person subject to this ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person may contribute credits from a forest mitigation bank. A credit is required for each tenth of an acre of an area of required planting.

B. The credits shall be debited from an approved forest mitigation bank prior to project approval.

C. If a person subject to this Ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money into the forest conservation fund at a rate:

- 1) Of 30 cents per square foot of the area of required planting until September 30, 2014; and
- 2) Adjusted for inflation as determined by the Department annually by regulations after September 30, 2014.

Article X-2 Establishing Forest Mitigation Banks

10.1.2 Forest Mitigation Banks

- A. A person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this ordinance.

- B. The forest mitigation bank shall:
 - 1) Afforest or reforest an area of land in accordance with a forest mitigation agreement;
 - 2) Be protected by an easement, deed restrictions, or covenants which require the land in the bank to remain forested in perpetuity and are enforceable by the Department and the Department of Natural Resources;
 - 3) Limit the use of the land in the bank to those activities which are consistent with forest conservation such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department;
 - 4) Use native plant materials for afforestation and reforestation unless inappropriate; and
 - 5) Cause trees to be planted which;
 - a) Establish or enhance forested buffers adjacent to intermittent and perennial streams and coastal bays to widths of at least 50 feet.
 - b) Establish or increase existing forested corridors, which, where practical, should be a minimum of 300 feet in width to facilitate wildlife movement, to connect existing forests within or adjacent to the site;
 - c) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - d) Establish or enhance forested areas in 100 year floodplains;
 - e) Stabilize slopes of 25 percent or greater;
 - f) Stabilize slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
 - g) Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way; or

- h) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

C. A person proposing to create a forest mitigation bank shall submit to the Department a:

- 1) Completed application on a form approved by the Department which has been signed by an authorized individual in conformance with Article XVIII of these regulations.
- 2) Forest mitigation bank plan which contains a:
 - a) Vicinity map of the proposed mitigation bank site;
 - b) Simplified forest stand delineation which meets the criteria of Article V of these regulations.
 - c) Detailed afforestation or reforestation plan, which shall include a timetable and description of the site and soil preparation needed, species, size, and spacing to be utilized, prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Article XVIII of these regulations.
 - d) Proposed two year maintenance agreement that:
 - i) Sets forth how the areas to be afforested or reforested will be maintained to ensure protection and satisfactory establishment;
 - ii) Complies with COMAR 08.19.04.05c(4)(a), and
 - iii) Includes watering and reinforcement planting provisions if survival falls below required standards;
- 3) Copy of the deed to the property;
- 4) Survey or other legally sufficient description of the bank site for inclusion in the deeds of easement, deed restrictions, or covenants;
- 5) Title report or other assurance that:
 - a) The property is not encumbered by any covenants or other types of restrictions which would impair the property's use as a forest mitigation bank; and
 - b) There is legally sufficient access to the forest mitigation bank site which can be used by the Department and its assignees to inspect the forest mitigation bank; and
- 6) Description of the system to be used by the person owning and operating the forest mitigation bank to identify and keep track of which portions of the bank

have been debited to meet an applicant's offsite afforestation or reforestation requirements.

D) The owner of an approved forest mitigation bank shall enter into an agreement with the Department which contains:

- 1) The approved reforestation or afforestation plan;
- 2) The approved system for marking and tracking which portions of the bank have been debited; and
- 3) An acknowledgement that the bank may not debit any portion of the afforested or reforested land until two years of successful growth has been achieved unless the banker has planted 25 percent more area than the area of the debited tract and posted a bond or alternate form of security.

Article XI Recommended Tree Species

- 11.1 Recommended Tree Species List.
 - 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 Department.
 - B. The Department has adopted a list of tree species to be used for any required afforestation or reforestation.
 - C. This section shall in no way prohibit the use of non native species for ornamental and landscaping purposes when such plantings are in addition to the required reforestation or afforestation. The Department may prohibit the use of species identified as invasive and listed in the Forest Conservation Technical Manual.

Article XII Financial Security and Protective Agreements for Afforestation, Reforestation and Retention

12.1 Financial Security – Bonding requirements for Afforestation and Reforestation.

- A. A person, other than a Federal, State, or County agency, required to contribute to the State Forest Conservation Fund, or conduct afforestation or reforestation under this article shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Department. The surety shall:
- 1) Assure that the afforestation, reforestation, and the associated management agreement are conducted and maintained in accordance with the approved forest conservation plan;
 - 2) Be in an amount equal to the estimated cost, as approved by the Department, of afforestation, reforestation, and the associated management agreement;
 - 3) Be in a form and content approved by the Department;
 - 4) Be made payable to Cecil County Government;
 - 5) Be issued by a financial institution authorized to do business in Maryland;
 - 6) May not be cancelled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:
 - a) The Department and the obligee are notified in writing by registered mail of the intent to cancel not less than ninety (90) days prior to cancellation; and
 - b) At least forty-five (45) days before the cancellation date indicated in the notice, the obligee files a commitment from a surety, bank, or other issuing entity to provide a substitute security which will be effective on the cancellation date indicated in the notice.
- B. The person required to file a bond under Section 12.1A of these regulations may request reduction of the amount of the bond or other financial surety by submitting a written request to the Department 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 amount may be reduced by no more than 80 percent of the initial bond or other financial security amount. At the time of the reduction request the person may also change the type of guarantee with the approval of the Department. The request for release of a bond shall follow the schedule outline below. The release dates given are the earliest dates for which any release may be

granted. Releases are not guaranteed and shall reflect the success rate of the planting project being inspected.

<u>Plant Date</u>	<u>Partial Release</u>	<u>Full release</u>
before 5/15	9/15 same year	9/15 following year
5/15 – 6/30	6/1 following year	9/15 following year
after 6/30	9/15 following year	9/15 second year

- C. The Department 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.
- D. If, after the dates for full release given under Subsection B above, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Cecil County Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released. The release of the bond shall follow the procedure below:
- 1) The bond shall be released on receipt of written notice from the Department that all afforestation or reforestation requirements have been met and the area of the project is subject to a long term management agreement.
 - 2) Written notice shall be sent at the end of the required 2-year monitoring and management period.
 - 3) If the Department fails to send written notice by the end of the monitoring and management period, the bond shall be automatically released.
- E. Forfeiture of Financial Security.
- 1) Forfeiture of the financial security may be required if the obligee fails to comply with:
 - a) revocation of the forest conservation plan;
 - b) an administrative order; or
 - c) an element of the afforestation or reforestation plan.
 - 2) The Department shall notify the obligee, by certified mail, of the intention of the Department to initiate forfeiture proceedings.
 - 3) The obligee has thirty (30) days from receipt of the notice of forfeiture to show cause why the bond or other financial security may not be forfeited.

- 4) If the obligee fails to show cause, the bond or other financial security shall be forfeited.
- 5) The Department shall use forfeited financial security to perform the afforestation or reforestation in accordance with the provisions of Section 9.1 of these regulations.

12.2 Protective Agreements

- A. Long term protective agreements are legally binding devices in effect at all times which will ensure those areas retained, afforested, and/or reforested are limited to uses which are consistent with forest conservation. These include:
- 1) Forest Conservation and Management Agreement as provided for under Tax-Property Article, Section 8-211, Annotated Code of Maryland, and COMAR 08.07.03.
 - 2) Other legally binding protective agreements including: covenants running with the land; deed restrictions; conservation easements; land trusts; and other long term protective measures as approved by the Department.
 - 3) Approved forest management plans prepared by a licensed forester, in accordance with the requirements for a Forest Management Plan found in the Cecil County Forest Conservation Technical Manual.
 - a) A forest management plan:
 - i) Shall be legally binding from the date of approval;
 - ii) Shall be submitted to the Department of Natural Resources' forester assigned to the county where the property is located; and
 - iii) May be amended periodically, as provided for in Section (3)(d).
 - b) The Department of Natural Resources' forester shall review the plan to ensure that it is complete and consistent with the local program.
 - c) The Department shall notify the applicant whether the forest management plan has been approved.
 - d) Amendment for an approved forest management plan may proceed under the following procedure.
 - i) If there is a change in site conditions or landowner objectives.
 - ii) Amendments shall be prepared by a licensed professional forester.
 - iii) The amendment shall be submitted to the Department of Natural Resources'

forester assigned to the county where the property is located.

- iv) The forester shall review the amendment to ensure that it is complete and consistent with the State or local program.
- v) The Department shall notify the applicant as to whether the amendment has been approved.
- vi) The applicant shall sign the amendment.

B. Short term protective agreements are management plans prepared for a person required to conduct afforestation or reforestation under these Regulations and shall include in the forest conservation plan a binding maintenance agreement for the length of two years, as specified in the Forest Conservation Manual.

- 1) Approval procedures and timing shall be consistent with the procedures provided in Article VI of these Regulations.
- 2) The maintenance agreement shall detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in Chapter 3 of the Forest Conservation Manual.
- 3) The person required to conduct the afforestation or reforestation, after this referred to as the "obligee," shall present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:
 - a) An executed deed conveying title to a selected site to the obligee;
 - b) An executed conservation agreement;
 - c) Written evidence of the landowner's consent to the use of a selected site;
 - d) A fully executed option agreement, long term lease agreement, or contract of sale for a selected site; or
 - e) Other written evidence of a possessory or ownership interest in a selected site.
- 4) The Department shall be a signatory to the maintenance agreement or shall be designated a third-party beneficiary of the agreement.
- 5) The Department may not release a bond or end monitoring without receipt of a legally binding deed, long term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.
- 6) The maintenance agreement shall provide for access by the Department to the afforestation or reforestation site.

Article XIII Standards for Protecting Trees from Construction Activities

13.1 Protection Devices

- A. The County has adopted standards for the protection of trees from construction activity. These devices and procedures are defined and described in the Cecil 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 these regulations, the applicant shall demonstrate to the Department that protective devices have been established.

Article XIV Variances

14.1 Procedure

- A. A person may request a variance from these regulations or the requirements of Natural Resources Article, §§ 5-1601 – 5-1612, Annotated Code of Maryland,, if the person demonstrates that enforcement would result in unwarranted hardship.
- 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 surrounding areas;
 - 3) Verify that the granting of this 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 Department shall make findings and issue a written statement within 45 days of receipt of a request for a Variance as to whether or not the applicant has met the requirements in Subsections A and B of this article before the Department may grant a Variance.
- D. An appeal of the Department's decision shall be filed within 15 days of the signing of the decision to the Board of Appeals. The appeals process and requirements shall conform to the requirements of the Cecil County Zoning ordinance, Section 7.06D, and as may be amended.
- E. 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.
- F. There is established by these regulations the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial, or other original proceeding or appeal in the State concerning an approval of a Variance under these regulations.

Article XV Inspections

- 15.1 The Department, or its agent, shall make at least the following field inspections of a site subject to the provisions of these regulations.
- A. An inspection shall take place following the submittal of the forest stand delineation to verify the information presented in that report.
 - B. An inspection shall take place before a construction activity begins to determine whether forest protection measures have been installed and conservation areas are clearly marked onsite.
 - C. An inspection shall take place following completion of all construction activities to determine the level of compliance with the provisions of the final forest conservation plan.

Article XVI Penalties

- 16.1 Enforcement. The provisions of this article apply to a person making application for a subdivision or project plan, grading or sediment control permit, or area 40,000 square feet or greater.
- A. Noncompliance fees.
- 1) A person found to be in noncompliance with these regulations, the forest conservation plan, or the associated 2-year management agreement, shall be assessed by the Department the penalty of \$1.00 per square foot of the area found to be in noncompliance with the required forest conservation.
 - 2) Money collected under Subsection A(1) of this article shall be deposited into a local forest conservation fund as established under COMAR 08.19.02.02I(1)(b) and may be used by the Department for purposes related to implementing these regulations. Money collected for noncompliance shall not be returned to the violator.
- B. Violation.
1. In addition to the provisions under Subsection A of this article, a person who violates a provision of these regulations or administrative order adopted or issued under these regulations is liable for a penalty not to exceed \$1,000, which may be recovered in a civil action brought by the Department.
 2. Each day a violation continues is a separate violation.
- C. The Department may issue a stop work order against a person who violates a provision of this ordinance or a regulation, order, approved forest conservation plan, or maintenance agreement.
- D. The Department may seek an injunction requiring the person to cease violation of these regulations and take corrective action to restore or reforest an area.
- E. The following enforcement action may be taken when a violation occurs.
1. Complaints and Orders.
 - a) The Department may serve a written complaint on an alleged violator if the Department determines that there has been a violation of:
 - i. A provision of these regulations;
 - ii. A forest stand delineation or forest conservation plan;
 - iii. An administrative order issue under these regulations; or
 - iv. A declaration of intent.
 - b) The complaint shall:
 - i. State the provision violated; and

- ii. Provide an opportunity to request a hearing to contest the complaint.

2. Corrective Action.

- a) The Department may issue an administrative order requiring the violator to take corrective action within a certain time period.
- b) The corrective action may include an order to:
 - i. Stop the violation;
 - ii. Stabilize the site;
 - iii. Stop all construction work at the site of a regulated activity; or
 - iv. Restore or rectify unlawfully cleared areas.

3. Service.

- a) A complaint, order, or other administrative notice issued by the Department shall be served:
 - i. On the owner of the property (the “violator”) on which the alleged violation is occurring;
 - ii. On the violator’s agent at the activity site; or
 - iii. By certified mail to the violator’s last known address.
- b) An order issued under this regulation is effective immediately, according to its terms, when it is served.

4. Administrative Action for a Forest Conservation Plan or Bond. The Department may suspend or revoke a forest conservation plan or forfeit a bond on a forest conservation plan on failure of the violator to comply with the requirements of an administrative order.

5. Plan Suspension and Revocation. The Department may suspend or revoke a plan after notice to the violator and opportunity for an administrative hearing has been provided if the Department determines that one or more of the following has occurred:

- a) Failure of a violator to insure a financial security in accordance with the requirements and procedures set forth in Article XII of these regulations;
- b) Failure to comply with the requirements of an administrative action or order issued under these regulations;
- c) Misrepresentation in the application process or failure to disclose a relevant or material fact;
- d) Violation of a forest conservation plan requirement;

- e) Deviation from the conditions, specifications, or requirements of a plan;
 - f) Changes in site conditions, new information, or amended regulatory requirements necessitate preparation of a new or amended Forest Conservation Plan.
6. Notice. Except as provided under Section 16.1D(8) of these regulations, the Department may not suspend or revoke a forest conservation plan unless the Department first gives the violator written notice by certified mail of the specific facts that warrant suspension or revocation.
7. Statutory Remedies. The provisions of these regulations may not be construed to limit or affect the authority of the Department to proceed against violators under Natural Resources Article §5-1612, Annotated Code of Maryland.
8. Emergency Action.
- a) The Department may order the immediate suspension of a forest conservation plan if the Department finds that the public health, safety, or welfare imperatively requires the emergency suspension.
 - b) The Department shall give the violator written notice that the emergency action has been taken.
 - c) A notice of emergency action shall include a statement of:
 - i. Specific facts on which the emergency suspension is based; and
 - ii. The violator's opportunity to be heard.

Article XVII Commercial Timber Harvests

- 17.1 Any commercial timber harvesting activity involving greater than one acre of forest in a one year period shall submit a timber harvest plan before the cutting begins.
- 17.2 Procedure for a Timber Harvesting Plan.
- A. An individual may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan provided that the harvest:
1. Is consistent with the intent of an approved forest management plan, forest conservation management agreement, or other long term protective agreement;
 2. Is consistent with the intent and requirements of the approved forest conservation plan; and
 3. Is subject to a timber harvest plan:
 - a) Prepared by a licensed professional forester;
 - b) Submitted to the Cecil County Forest Conservancy District Board for review and approval according to the standards set forth in the Cecil County Forest Conservation Technical Manual; and
 - c) That remains in effect for two years.
- B. The Cecil County Forest Conservancy District Board shall notify the individual and the Department whether the timber harvest plan under section 17.2A of these regulations has been approved.

Article XVIII Approved Qualified Professional

- 18.1 An individual may prepare a forest stand delineation or a forest conservation plan, if the individual:
- A. Is a licensed forester;
 - B. Is a licensed landscape architect; or
 - C. Meets the requirements of Section 18.2 of these regulations.
- 18.2 An individual may be approved by the Department as a qualified professional if the individual:
- A. Possesses a 4-year degree in the natural resources sciences, natural resource management, landscape or environmental planning;
 - B. Has the following:
 - 1) 2 years of professional experience in natural resources sciences, natural resource management, landscape planning or environmental planning, or its equivalent, as determined by the State, or
 - 2) A graduate degree in natural resources and 1 year of professional experience.
 - C. Has the ability to meet the obligations required by the Forest Conservation Manual to prepare a forest stand delineation and forest conservation plan; and
 - D. Satisfactorily completes a forest conservation course offered by the Department of Natural Resources.
 - E. Upon completion of the course the qualified professional should be able to accomplish the following tasks:
 - 1) Develop and interpret a forest stand delineation and forest conservation plan according to criteria stated in the Cecil County Forest Conservation Technical Manual;
 - 2) Prepare and interpret soils, topography, floodplain, wetlands, and site maps;
 - 3) Prepare afforestation and reforestation plans according to criteria stated in the Cecil County Forest Conservation Technical Manual;
 - 4) Prepare a sketch map of a site, showing areas of forest retention, proposed reforestation, or afforestation;
 - 5) Identify and evaluate protection measures that may be appropriate for forested areas that are sensitive to disturbance;
 - 6) Identify flora and fauna, including trees, woody shrubs, plants, and wildlife;
 - 7) Diagnose and treat forest pest and disease problems; and
 - 8) Understand ecosystem interactions including:
 - a) Water regime impacts,
 - b) Soil variations as they affect existing trees and species selection for afforestation and reforestation
 - c) Wildlife habitats,
 - d) Multi-storied plant canopies, and
 - e) Forest successional stages.

Article XIX Amendments

- 19.1 These regulations may be amended as required. All amendments to these regulations are subject to the approval of the Department of Natural Resources.
- 19.2 The following procedure is established for the submission, review, and approval of amendments to these regulations.
- A. Submission. The department, either on its own initiative or at the request of a third person, may develop amendments to these regulations. A proposed amendment shall be submitted by the Department to the County Planning Commission for their review at their regularly scheduled monthly public hearing. The amendment shall be advertised in accordance with procedures currently established for amendments to the county zoning ordinance.
- B. Review.
- 1) The County Planning Commission shall develop a recommendation on the amendment. The County Planning Commission shall recommend approval only if the amendment complies with the intent of the Forest Conservation Act of 1991.
 - 2) Upon a favorable recommendation, the amendment shall be submitted to the Department of Natural Resources, Forestry Division, for their review and approval.
 - 3) Upon approval of the Department of Natural Resources, Forestry Division, the amendment shall be submitted for adoption to the Cecil County Council. The proposed amendment shall be advertised in accordance with current procedures for amendments to the county zoning ordinance. The County Council shall provide concerned persons an opportunity to make comments on the amendment at a regularly scheduled public meeting. If additional changes to the Department of Natural resources approved amendment are requested by Cecil County Government, those changes must also be approved by the Department of Natural Resources prior to the County Council adoption.

Article XX Annual Report

- 20.1 On or before March 1 of each year, the Department shall submit to the Department of Natural Resources a report on:
- A. The number, location, and type of projects subject to the provisions of these regulations;
 - 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 implement the Forest Conservation Program.
 - E. Location and size of all forest mitigation banks approved during the past year with a description of the priority areas afforested or reforested by the bank;
 - F. Number of acres debited from each forest mitigation bank since the last annual report; and
 - G. Forest mitigation banks inspected since the last annual report.

Article XXI Biennial Review by the Department of Natural Resources

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



CECIL COUNTY COMMISSIONERS

AMENDMENT TO THE CECIL COUNTY FOREST CONSERVATION REGULATIONS

WHEREAS, Sections 5-1601 through 5-1612 of the Natural Resources Article, Annotated Code of Maryland enact Forest Conservation Regulations and a Forest Conservation Technical Manual and provide for the administration, enforcement, and amendment of same, and

WHEREAS, the Planning Commission has recommended amendments to the Cecil County Forest Conservation Regulations and Forest Conservation Technical Manual regarding the provisions of said Regulations, and

WHEREAS, a public hearing regarding said proposed amendments was held before the Planning Commission on Monday, June 17, 2002, and

WHEREAS, the Planning Commission recommended approval of said amendments to the Board of County Commissioners, and

WHEREAS, a public hearing regarding said proposed amendments was held before the Board of County Commissioners on Tuesday, July 16, 2002, and

WHEREAS, all requirements of the Natural Resources Article of the Annotated Code of Maryland with regard to the amendment of the Cecil County Forest Conservation Regulations and Forest Conservation Technical Manual have been met;

NOW, THEREFORE, BE IT ENACTED, by the Board of County Commissioners of Cecil County, State of Maryland, that the following Amendments be and are hereby enacted:

Amend by addition []
Amend by deletion { }

ARTICLE II, SECTION 2.8

{“Champion tree of the State” means a tree which appears in the State Forest Conservation Manual list of state champion trees }

ARTICLE II, SECTION 2.24

“Forest cover” means the area of a site meeting the definition of forest *{extending to the dripline of the edge of the forested area}*.

[ARTICLE II, SECTION 2.25-1

“Forest mitigation bank” means an area of land which has been intentionally reforested or afforested for the express purpose of providing credits for reforestation requirements]

[ARTICLE II, SECTION 2.25-2

“Forest mitigation bank agreement” means an agreement entered into by a an individual owning a forest mitigation bank and the Department which commits the banker to certain procedures and requirements when creating and operating the forest mitigation bank.]

[ARTICLE II, SECTION 2.25-3

“Forest mitigation bank plan” means a plan submitted for approval of a forest mitigation bank to the Department by an individual proposing to establish a forest mitigation bank.]

Amend by addition []
Amend by deletion { }

[ARTICLE II, SECTION 2.31-1

“Linear project” is a project which:

- D. Is elongated with nearly parallel sides;**
- E. 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**
- F. May traverse fee simple properties through defined boundaries, or established easement rights.]**

ARTICLE II, SECTION 2.33

“Lot” means a unit of land, the boundaries of which have been established {as a result of a deed or previous} [by] subdivision of a larger parcel, and which will not be the subject of further subdivision without an approved forest stand delineation and forest conservation plan.

[ARTICLE II, SECTION 2.39(C)

[For a linear project:

- 2) The area of a right-of-way width, new access roads, and storage; or**
- 2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.]**

ARTICLE II, SECTION 2.50(A)2

{Established} **[Establishment of a forest]** according to procedures set forth in the Cecil County Forest Conservation Technical Manual.

Amend by addition []
Amend by deletion { }

ARTICLE III, SECTION 3.2H

[**A residential construction activity**] conducted on a single lot of any size existing prior to January 1993, [**or a linear project not otherwise exempted under this ordinance**], if the activity:

(1) – (3) (text unchanged)

[ARTICLE III, SECTION 3.2P

The cutting or clearing of trees to comply with the requirements of 14C.F.R. 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.]

[ARTICLE III, SECTION 3.3H

In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of these Regulations.]

[ARTICLE VI, SECTION 6.1B(4)

Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article 5-1607, Annotated Code of Maryland.]

ARTICLE VI, SECTION 6.1C

The applicant shall demonstrate to the satisfaction of the Department of Natural Resources, Forestry Programs that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the State forest conservation fund [**or to purchase credits from a forest mitigation bank.**]

Amend by addition []
Amend by deletion { }

ARTICLE VI, SECTION 6.2D

During the different stages of the review process, the preliminary forest conservation plan may be modified **[provided the Department approves of the changes.]** {Modifications affecting less than 3 lots .or 30,000 square feet of forest may be submitted as amendments and incorporated into the final forest conservation plan. When modification to more than 3 lots .or 30,000 square feet of forest is proposed, a new plan is required. Modifications shall be reviewed by the Department for consistency with the intent and requirements of these regulations.}

[ARTICLE VI, SECTION 6.3E-G

E. The Department may revoke an approved forest conservation plan if it finds that:

- 4) A provision of the plan has been violated;**
- 5) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or**
- 6) Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.**

F. The Department may issue a stop work order against a person who violates a provision of this ordinance or a regulation, order, approved forest conservation plan, or maintenance agreement.

G. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing.]

ARTICLE VIII, SECTION 8.1B

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, **[purchase of credits from a forest mitigation bank]**, or payment into the forest conservation fund according to the formula set forth in this Subsection and Subsection C of this article and consistent with the approved forest conservation plan developed as per Section 6.1.

(remainder unchanged)

Amend by addition []
Amend by deletion { }

[ARTICLE IX, SECTION 9.1E

Off site afforestation and reforestation may include the use of forest mitigation banks which have been so designated in advance by the Department.]

[ARTICLE X-1

[Payment by Credits From a Forest Mitigation Banks

10.1.1 Use of a Forest Mitigation Bank

A. – If a person subject to this ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonable accomplished, the person may contribute credits from a forest mitigation bank. A credit is required for each tenth of an acre of an area of required planting.

B. – The credits shall be debited from an approved forest mitigation bank prior to project approval]

[ARTICLE X-2

Establishing Forest Mitigation Banks

10.1.2 Forest Mitigation Banks

D. A person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this ordinance.

E. The forest mitigation bank shall:

- 1) Afforest or reforest an area of land in accordance with a forest mitigation agreement;**

Amend by addition []
Amend by deletion { }

- 2) **Be protected by an easement, deed restrictions, or covenants which require the land in the bank to remain forested in perpetuity and are enforceable by the Department and the Department of Natural Resources;**
- 3) **Limit the use of the land in the bank to those activities which are consistent with forest conservation such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department;**
- 4) **Use native plant materials for afforestation and reforestation unless inappropriate; and**
- 5) **Cause trees to be planted which;**
 - a) **Establish or enhance forested buffers adjacent to intermittent and perennial streams and coastal bays to widths of at least 50 feet.**
 - b) **Establish or increase existing forested corridors, which, where practical, should be a minimum of 300 feet in width to facilitate wildlife movement, to connect existing forests within or adjacent to the site;**
 - c) **Establish or enhance forest buffers adjacent to critical habitats where appropriate;**
 - d) **Establish or enhance forested areas in 100 year floodplains;**
 - e) **Stabilize slopes of 25 percent or greater;**
 - f) **Stabilize slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;**
 - g) **Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way; or**
 - h) **Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.**

Amend by addition []
Amend by deletion { }

F. A person proposing to create a forest mitigation bank shall submit to the Department a:

- 1) Completed application on a form approved by the Department which has been signed by an authorized individual in conformance with Article XVIII of these regulations.**
- 2) Forest mitigation bank plan which contains a:**
 - a) Vicinity map of the proposed mitigation bank site;**
 - b) Simplified forest stand delineation which meets the criteria of Article V of these regulations.**
 - c) Detailed afforestation or reforestation plan, which shall include a timetable and description of the site and soil preparation needed, species, size, and spacing to be utilized, prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Article XVIII of these regulations.**
 - d) Proposed two year maintenance agreement that:**
 - j) Sets forth how the areas to be afforested or reforested will be maintained to ensure protection and satisfactory establishment;**
 - ii) Complies with COMAR 08.19.04.05c(4)(a), and**
 - iii) Includes watering and reinforcement planting provisions if survival falls below required standards;**
- 3) Copy of the deed to the property;**
- 4) Survey or other legally sufficient description of the bank site for inclusion in the deeds of easement, deed restrictions, or covenants;**
- 5) Title report or other assurance that:**
 - a) The property is not encumbered by any covenants or other types of restrictions which would impair the property's use as a forest mitigation bank; and**

Amend by addition []
Amend by deletion { }

b) **There is legally sufficient access to the forest mitigation bank site which can be used by the Department and its assignees to inspect the forest mitigation bank; and**

6) **Description of the system to be used by the person owning and operating the forest mitigation bank to identify and keep track of which portions of the bank have been debited to meet an applicant's offsite afforestation or reforestation requirements.**

D) The owner of an approved forest mitigation bank shall enter into an agreement with the Department which contains:

4) **The approved reforestation or afforestation plan;**

5) **The approved system for marking and tracking which portions of the bank have been debited; and**

6) **An acknowledgement that the bank may not debit any portion of the afforested or reforested land until two years of successful growth has been achieved unless the banker has planted 25 percent more area than the area of the debited tract and posted a bond or alternate form of security.]**

ARTICLE XX, SECTION 20.1

On or before {July 1} [**March 1**] of each year, the Department shall submit to the {Senate Economic and Environmental Affairs Committee and the House Environmental committee} [**Department of Natural Resources**] a report which contains the following;

A. - D. (Text Unchanged)

[E. Location and size of all forest mitigation banks approved during the past year with a description of the priority areas afforested or reforested by the bank;

G. Number of acres debited from each forest mitigation bank since the last annual report; and

H. Forest mitigation banks inspected since the last annual report.]

Amend by addition []
Amend by deletion { }

FOREST CONSERVATION TECHNICAL MANUAL

SECTION 3.3, PAGE 32

[Fencing in and along Forest Retention Areas shall be permitted as long as:

- 1) Installation of the fence does not result in the removal of any trees.
- 2) The fencing does not prohibit the movement of wildlife through the Forest Retention Area.
- 3) The fencing requirements stated in Section 50 of the Cecil County Zoning Ordinance are met.]

APPENDIX A, PAGE A-10

Steep Erodible Slopes – Areas with slopes greater than 15 percent hav {e} [ing] so[i]ls with K values greater than 0.35

7/16/02
Adopted

Nelson K. Bolender
Nelson K. Bolender
President

Harry A. Heppron
Harry A. Heppron
Commissioner

Attest:

Alfred C. Wein, Jr.
Alfred C. Wein, Jr.
County Administrator

Phyllis Kilby
Phyllis Kilby
Commissioner

CECIL COUNTY COMMISSIONERS

**AMENDMENT TO THE CECIL COUNTY
FOREST CONSERVATION REGULATIONS**

WHEREAS, Sections 5-1601 through 5-1612 of the Natural Resources Article, Annotated Code of Maryland enact Forest Conservation Regulations and a Forest Conservation Technical Manual and provide for the administration, enforcement, and amendment of same, and

WHEREAS, the Planning Commission has recommended amendments to the Cecil County Forest Conservation Regulations and Forest Conservation Technical Manual regarding the provisions of said Regulations, and

WHEREAS, a public hearing regarding said proposed amendments was held before the Planning Commission on Monday, September 21, 2009, and

WHEREAS, the Planning Commission recommended approval of said amendments to the Board of County Commissioners, and

WHEREAS, a public hearing regarding said proposed amendments was held before the Board of County Commissioners on Tuesday, October 6, 2009, and

WHEREAS, all requirements of the Natural Resources Article of the Annotated Code of Maryland with regard to the amendment of the Cecil County Forest Conservation Regulations and Forest Conservation Technical Manual have been met;

NOW, THEREFORE, BE IT ENACTED, by the Board of County Commissioners of Cecil County, State of Maryland, that the following Amendments be and are hereby enacted:

Amend by addition []
Amend by deletion { }

ARTICLE III, SECTION 3.2H

A residential construction activity conducted on a single lot of any size existing prior to January 1993, or a linear project not otherwise exempted under this Ordinance, if the activity:

(1) Does not result in the cumulative cutting, clearing, or grading of more than *{40,000}* **[20,000]** square feet of forest;

(2) (text unchanged)

(3) (text unchanged)

ARTICLE III, SECTION 3.2K

An activity, including subdivision, required for the purpose of constructing a dwelling intended for use of the owner {,} **[or]** a child *{or a grandchild}* of the owner, *{or a parent or grandparent of the owner}* if the activity:

(1) Does not result in the cutting, clearing, or grading of more than *{40,000}* **[20,000]** square feet of forest; and

(2) (text unchanged)

(3) (text unchanged)

[(4) This exemption shall not apply to properties for which title is held by an incorporated business, limited liability company (LLC), or other business entity.]

ARTICLE VI, SECTION 6.1B

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) (text unchanged)

(2) Why the priority forests and priority areas specified in Section[s] 7.2 [and 7.2-1] of these regulations cannot be left in an undisturbed condition;

{(3)}[(2a)] If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Article IX of these regulations; and

{(4)}[(2b)] Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article 5-1607, Annotated Code of Maryland.

[(3) How the disturbance to the priority forests and priority areas specified on the forest stand delineation and/or forest conservation plan, qualifies for a variance.

ARTCILE VII, SECTION 7.2

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

- A. (text unchanged)
- B. (text unchanged)

{

- C. *Trees, shrubs, or plants determined to be rare, threatened, or endangered under:*
 - a. *The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 – 1544 and in 50 CFR Part 17;*
 - b. *The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2A-01 – 10-2A-09, Annotated Code of Maryland; and*
 - c. *COMAR 08.03.08*

- D. *Trees that:*
 - a. *Are part of a registered historic site,*
 - b. *Are associated with a registered historic structure, or*
 - c. *Have been designated by the State or the Department as a national, state, or county champion tree; and*

- E. *Any tree, provided that it does not pose an immediate hazard due to disease or insect infestation, having a diameter measured at 4.5 feet above the ground of:*
 - a. *30 inches or more; or*
 - b. *75% 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 Department of Natural Resources.*

- F. *Areas classified as having Priority Forest Structure by the Forest Structure Analysis methodology as described in the Cecil County Forest Conservation Technical Manual.*}

[ARTICLE VII, SECTION 7.2-1

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 Department, that the applicant qualifies for a variance in accordance with Section 14.1 of this article:

- E. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:**
 - a. The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 – 1544 and in 50 CFR Part 17;**
 - b. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2A-01 – 10-2A-09, Annotated Code of Maryland; and**
 - c. COMAR 08.03.08**

- F. Trees that:**
 - a. Are part of a registered historic site,**
 - b. Are associated with a registered historic structure, or**
 - c. Have been designated by the State or the Department as a national, state, or county champion tree; and**

- G. Any tree, provided that it does not pose an immediate hazard due to disease or insect infestation, having a diameter measured at 4.5 feet above the ground of:**
 - a. 30 inches or more; or**
 - b. 75% 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 Department of Natural Resources.**

- H. Areas classified as having Priority Forest Structure by the Forest Structure Analysis methodology as described in the Cecil County Forest Conservation Technical Manual.]**

ARTICLE X, SECTION 10.1

10.1 Forest Conservation Fund

- A. (text unchanged)
- B. (text unchanged)

[

- C. If a person subject to this Ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money into the forest conservation fund at a rate:**
 - 3) Of 30 cents per square foot of the area of required planting until September 30, 2014; and**
 - 4) Adjusted for inflation as determined by the Department annually by regulations after September 30, 2014.]**

Attest:

Brian Lockhart, President

Alfred C. Wein, Jr.
County Administrator

Rebecca J. Demmler, Vice President

Robert Hodge, Commissioner

Wayne L. Tome Commissioner

ADOPTED

Jim Mullin, Commissioner

**COUNTY COUNCIL OF CECIL COUNTY
LEGISLATIVE SESSION DAY 2014-08**

BILL NO. 2014-15

Title of Bill: Amendment - Forest Conservation Regulations

Synopsis: An Act to amend the Cecil County Forest Conservation Regulations, Article II, Forest and Tree Conservation Definitions, to add Section 2.58 "Stream Restoration Project"; and Article III. Applications, to add exemptions for maintenance for retrofitting stormwater management structures and for stream restoration projects to Section 3.2K.

Introduced by: Council President at the request of the Department of Planning and Zoning

Introduced and ordered posted on: May 6, 2014

Public hearing scheduled on: June 3, 2014 **at:** 7:00 p.m.

Scheduled for consideration: June 17, 2014

By: _____
Council Manager

Public Hearing

Notice of time and place of public hearing and title of Bill have been posted by May 7, 2014 at the County Administration Building, 200 Chesapeake Blvd., Elkton and having been published according to the Charter on May 14, 2014 and May 21, 2014, a public hearing was held on June 3, 2014, and concluded on June 17, 2014.

By: _____
Council Manager

Explanation: CAPITALS INDICATE MATTER ADDED TO EXISTING BILL
{Brackets} indicate matter deleted from existing law
Underlining indicates language added to a Bill by amendment
Strike through indicates language stricken out of a Bill by amendment.

1 **WHEREAS**, the Natural Resources Article of the Annotated Code of Maryland, Title 5, Forests and
2 Parks, Subtitle 16. Forest Conservation, Section 5-1603 empowers the Counties to develop a local forest
3 conservation program, consistent with the intent, requirements, and standards of the State Forest
4 Conservation Program; and

5 **WHEREAS**, pursuant to Sections 5-1612 through 5-1625 of the Natural Resources Article, the Cecil
6 County Department of Planning and Zoning prepared the Forest Conservation Regulations, which was
7 adopted by the Board of County Commissioners of Cecil County on December 9, 1992; and

8 **WHEREAS**, the Department of Planning and Zoning has recommended amendments to the Cecil
9 County Forest Conservation Regulations; and

10 **WHEREAS**, a public hearing on these proposed changes was held before the Planning Commission
11 on Monday, April 21, 2014; and

12 **WHEREAS**, the Planning Commission recommended approval of the amendments to the Forest
13 Conservation Regulations.

14 **NOW THEREFORE, BE IT HEREBY ENACTED** by the County Council of Cecil County, Maryland, that
15 the Cecil County Forest Conservation Regulations shall be amended as follows:

16 Article II. Forest and Tree Conservation Definitions

17 **§2.58 "STREAM RESTORATION PROJECT" MEANS AN ACTIVITY THAT:**

- 18 **A. IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT**
19 **LOCATED WITHIN AN EXISTING STREAM, WATERWAY, OR FLOODPLAIN;**
20 **B. AVOIDS AND MINIMIZES IMPACTS TO FOREST AND PROVIDES FOR REPLANTING ON-SITE AN**
21 **EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;**
22 **C. MAY BE PERFORMED UNDER A MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT, A**
23 **WATERSHED IMPLEMENTATION PLAN GROWTH OFFSET, OR ANOTHER PLAN ADMINISTERED BY THE**
24 **STATE OR LOCAL GOVERNMENT TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND**
25 **D. IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY**
26 **OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.**

27 **{§2.58} §2.59** "Subdivision" means any division of a unit of land into 2 or more lots or parcels for the
28 purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

29 **{§2.59} §2.60** Timber Harvesting.

30 **A. "Timber harvesting"** means a tree-cutting operation affecting 1 or more acres of forest or

31 developed woodland within a 1-year interval that disturbs 5,000 square feet or more of
32 forest floor.

33 B. "Timber harvesting" does not include grubbing and clearing of root mass.

34 ~~{§2.60}~~ **§2.61** "Tract" means property or unit of land subject to an application for a grading or sediment
35 control permit, subdivision approval, project plan approval, or areas subject to this law.

36 ~~{§2.61}~~ **§2.62** "Tract for a planned unit development" means the entire property subject to a planned unit
37 development.

38 ~~{§2.62}~~ **§2.63** "Tree" means a large, branched woody plant having one or several self-supporting stems or
39 trunks that reach a height of at least 20 feet at maturity.

40 ~~{§2.63}~~ **§2.64** Variance

41 A. "Variance" means relief from Natural Resources Article, §§5-1601--5-1612, Annotated Code
42 of Maryland, or this Ordinance.

43 B. "Variance" does not mean a zoning variance.

44 ~~{§2.64}~~ **§2.65** "Watershed" means all land lying within an area described as a sub-basin in water quality
45 regulations adopted by the Department of the Environment under COMAR 26.08.02.08.

46 ~~{§2.65}~~ **§2.66** "Whip" means an unbranched woody plant greater than 24 inches in height and having a
47 diameter of less than 1 inch measured at 2 inches above the root collar.

48 Article III. Applications

49 **Q. MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY**
50 **INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, IF THE MAINTENANCE OR**
51 **RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF EXISTING**
52 **STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE; OR**

53 **R. A STREAM RESTORATION PROJECT, AS DEFINED IN ARTICLE II. 2.57 OF THIS ORDINANCE, FOR**
54 **WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS EXECUTED A BINDING**
55 **MAINTENANCE AGREEMENT OF AT LEAST 5 YEARS WITH THE AFFECTED PROPERTY OWNER OR OWNERS.**

56 Section 2. And Be it Further Enacted that this Act shall take effect sixty (60) calendar days after
57 enactment by the Council.

CERTIFICATION

I, HEREBY CERTIFY that the above Bill was posted for the public on the public bulletin board with the date, time and location of the public hearing meeting, copies were made available for the public, a copy was distributed to the press, and copy was made available on the Cecil County website.

BY: Council Manager

BILL NO: 2014-15

Title of Bill: Amendment – Forest Conservation Regulations
is hereby submitted to the County Council of Cecil County, Maryland for enrollment as being the text as finally passed .

CERTIFIED TRUE AND CORRECT

ENROLLED

Council Manager

Council President

Date: _____

Date: _____

BY THE COUNCIL

Read the third time.

Passed - LSD _____

Failed of Passage - LSD _____

BY: _____
Council Manager

SEALED WITH THE COUNTY SEAL AND PRESENTED TO THE COUNTY EXECUTIVE for approval this ____ day
of _____, 20____ at _____ p.m.
(10 business days from adoption §306)

BY: _____
Council Manager

BY THE EXECUTIVE:

Cecil County Executive

APPROVED Date: _____

VETOED Date: _____
(10 business days from presentation §306)

BY THE COUNCIL

This Bill No. 2014-15 having been approved by the Executive and returned to the Council becomes law
on _____ **with an effective date of** _____.

BY: _____
Council Manager