

SUBTITLE 12

FOREST CONSERVATION

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**SUBTITLE 12
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Will need to update once changes are made.

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Section 16.1200. Short Title; Background; Purpose.

- (a) **Short Title:** This Subtitle shall be known as the Forest Conservation Act of Howard County.
- (b) **Background:** This Subtitle is pursuant to the requirements of the Maryland Forest Conservation Act of 1991, which requires units of local government to adopt, by December 31, 1992, a local forest conservation program which meets or is more stringent than the requirements of the Natural Resources Article, §§ 5-1601 through 5-1612 of the Annotated Code of Maryland.
- (c) **Purpose:** The purpose of this Subtitle is to protect and maintain forest vegetation and forest areas in Howard County by requiring certain development projects to have an approved Forest Conservation Plan as a condition of approval of the development.

Comment [s1]: Change 5-1612 to 5-1613.

Comment [s2]: Add “, as amended”

Section 16.1201. Definitions.

Words and phrases used in this Subtitle have their usual meaning unless defined in the Subdivision Regulations [Subtitle 1 of this Title] or in this Section:

Comment [s3]: Add “and Land Development”

Comment [s4]: Delete brackets and replace with parenthesis.

- (a) **Afforestation:** "Afforestation" means the establishment of new forest on an area presently without forest cover, by planting in accord with the practices specified in the Forest Conservation Manual.
- (b) **Declaration of Intent:** "Declaration of Intent" means a statement signed by a landowner or developer certifying that:
 - (1) A proposed development is exempt from the requirement for an approved Forest Conservation Plan; and
 - (2) No activity requiring a Forest Conservation Plan will occur on the site within 5 years of the date of the completion of the exempt activity.
- (c) **Department:** "Department" means the Howard County Department of Planning and Zoning.
- (d) **Development:** "Development" means the establishment of a principal use of a site; a change in a principal use of a site; or the improvement or alteration of a site by the construction, enlargement, or relocation of a structure; the provision of stormwater management or roads; the grading of existing topography; the clearing or grubbing of existing vegetation; or any other nonagricultural activity that results in a change in existing site conditions.
- (e) **Forest:** "Forest" means a biological community dominated by trees and other woody plants covering an area of 10,000 square feet or greater that is at least 35 feet wide. "Forest" includes:
 - (1) Areas with a tree cover ratio 100 trees per acre with at least 50% of these trees being at least 2 inches in diameter at a height of 4.5 feet above ground; or

Comment [s5]: Add “ance”

(2) Areas meeting the criteria above that have been cut but not cleared.

“Forest” does not include orchards, tree nurseries, Christmas tree farms or other types of forest crops.

(f) **Forest Conservation:** "Forest conservation" means the retention of existing forest or the creation of new forest at the levels set by this Subtitle.

(g) **Forest Conservation Manual:** “Forest Conservation Manual” means the technical manual approved by the county council containing performance standards and guidelines for implementation of the Howard County Forest Conservation Program.

Comment [s6]: Capitalize County Council.

(h) **Forest Conservation Plan:** "Forest Conservation Plan" means a plan which shows the impacts of a proposed development on existing forest resources. A "Forest Conservation Plan" includes existing forest areas to be removed or retained; the location, extent and specifications for any reforestation or afforestation required; and legal measures to protect forest resources after completion of development in accordance with Section 16.1203 below.

(i) **Forest Mitigation Banking:** “Forest mitigation banking” means the planting of trees, according to plans approved by the Department, to be used as credit for plantings required under this Subtitle.

Comment [s7]: Add “or retention”.

Comment [s8]: Delete “s” from plantings and add “or retention”

(j) **Forest Stand Delineation:** “Forest stand delineation” means the evaluation, pursuant to Section 16.1204 of this Subtitle, of existing forests and other vegetation on a site proposed for development.

(k) **Limit of Disturbance:** “Limit of disturbance” means the boundary of permitted changes to existing site conditions due to clearing and grading, as well as other activities associated with site development such as parking of vehicles and equipment, storage of materials, and disposal of construction debris.

(l) **Manual:** “Manual” means the Forest Conservation Manual.

Comment [s9]: Add new definition (l) for Linear Project and reorder remaining definitions:
Linear Project: “Linear Project” means a project having an elongated configuration with nearly parallel sides designed to transport a utility product or public service (for example, gas, electricity, water, sewer, communications, trains and vehicles) not otherwise addressed in an application for subdivision.

(m) **Net Tract Area:** “Net tract area” means the total area to the nearest 1/10 acre, whether forested or not, of a proposed development, exclusive of any 100-year floodplain, utility transmission line easements, or preservation parcel as referenced in the zoning regulations. "Net tract area" is to be used in calculating any reforestation or afforestation obligations that may be created by the proposed development.

Comment [s10]: Delete “100-year floodplain, utility transmission line easements, or preservation parcel as referenced in the zoning regulations” and replace with “allowed deductions as set forth in the Forest Conservation Manual”.

(n) **Planned Business Park:** “Planned business park” means a commercial-industrial subdivision developed with an integrated plan that provides common infrastructure and protection of environmentally sensitive features.

(o) **Planned Unit Development:** “Planned Unit Development” means a development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in design with at least 20% of the land permanently dedicated to open space.

(p) **Reforestation:** “Reforestation” means the establishment, in accordance with the Howard County Forest Conservation Manual, of new forest cover to replace forest resources lost because of development activities.

(q) **Scenic road:** “Scenic road” means a public road or road segment that is included in the scenic roads inventory adopted by the county council in accordance with Section 16.1403 of this Code.

Comment [s11]: Capitalize County Council

(r) **Subdivision Regulations:** “Subdivision Regulations” means Title 16, Subtitle 1 of the Howard County Code, entitled “Subdivision and Land Development Regulations.”

(s) **Other Terms:** Other terms which are defined in the Natural Resources Article § 5-1601, “Definitions,” Annotated Code of Maryland, COMAR 08.19.01.03, “Definitions,” and COMAR 08.19.03, article II, “Forest and Tree Conservation Definitions,” are incorporated by reference and shall apply to this Subtitle for any terms which are not defined in this Section or the manual.

Comment [s12]: Insert new definition. *Urban Canopy:* “Urban Canopy” means tree canopy in urban locations that does not meet the minimum area and width requirements to qualify as forest, but does provide air and water quality, and habitat benefits, as determined by the Department.

Comment [s13]: Insert “, as amended”

(C.B. 51, 1994; C.B. 4, 1996)

Section 16.1202. Applicability; Exemptions; Declaration of Intent.

(a) **Forest Conservation Plan Required for Subdivision Plan, Site Development Plan or Grading Permit:** Unless exempted by Subsection (b) of this Section, any person or unit of local government developing land 40,000 square feet or greater in area shall file a Forest Conservation Plan (“plan”) with the Department. Plan approval is required prior to development and prior to approval of a:

Comment [s14]: Delete (“plan”)

- (1) Subdivision plan;
- (2) Site development plan;
- (3) Grading permit; or
- (4) County road and utility construction plans.

Comment [s15]: Insert
“Except as expressly provided in this Subtitle, if Sketch Plans or Preliminary Equivalent Sketch Plans were signed or approved on or before _____, 2011, then plans or permits listed in (1) - (4) immediately above shall continue to be processed and reviewed under the Forest Conservation Act of Howard County and the Manual existing prior to amendments approved and enacted on _____, 2011. In the event that the plan fails to be finally approved, then the plan should be resubmitted under the Forest Conservation Act of Howard County and the Manual as amended.”

(b) **Exemptions to Requirement for Forest Conservation Plans:**

(1) *Exemptions not requiring a Declaration of Intent:* The following development is exempt from the requirement of this Subtitle:

- (i) A subdivision, site development or grading permit for development on land which is less than 40,000 square feet;
- (ii) Development on a single lot of any size if it is in compliance with a previously approved Forest Conservation Plan and no new obligation is created;
- (iii) **Development** which has preliminary subdivision plan, site development plan or grading permit approval prior to December 31, 1992. This exemption does not apply to expansion of the limits of disturbance shown on such plans or to site development plans for build-out of exempt nonresidential subdivisions unless otherwise provided in this Section;
- (iv) A Planned Unit Development which has preliminary development plan approval and 50% or more of the land is recorded and substantially developed before December 31, 1992;
- (v) A planned business park of at least 75 acres which has preliminary plan approval before December 31, 1992, and which meets the intent of this Subtitle by retaining forest in high-priority locations (floodplains, wetlands, wetland and stream buffers, steep slopes, and/or wildlife corridors);
- (vi) Agricultural preservation subdivisions and any agricultural activity, including agricultural support buildings and structures built using accepted best management practice unless it involves the clearing of 40,000 square feet or greater of forest within a 1-year period;
- (vii) Resubdivisions, that do not create additional lots, ~~exempt divisions and plat corrections~~ as provided for in Sections 16.102 and 16.103 of this Title;
- (viii) Minor subdivisions that create one additional lot and have no further subdivision potential;
- (ix) Mining or other extractive activity exempted by state law from the forest conservation requirements;
- (x) Routine maintenance of existing roads and public utility rights-of-way. ~~Highway construction under capital projects and/or state funding in which one acre or more of forest is cut or cleared is exempt from this Subtitle but subject to state reforestation requirements set forth in natural resources article, § 5-103, Annotated Code of Maryland; and~~
- (xi) 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~~

Comment [s16]: Delete these first two exemptions and insert "(i) Development activity on a single lot smaller than 40,000 square feet, as long as the cutting, clearing or grading does not include any area already subject to a previously approved Forest Conservation Plan."

Comment [s17]: Delete this exemption, per changes to State law. Renumber remaining exemptions.

Comment [s18]: Add new sentence: "If new land area is added to the planned unit development, that new land area is subject to this Program."

Comment [s19]: Change 40,000 to 20,000 per recent change to State law.

Comment [s20]: Delete "exempt divisions and plat corrections" and insert "deed adjoiners, property consolidations, reconfigurations and correction plats"

Comment [s21]: Separate into two exemptions. First will be Routine maintenance of existing roads and public utility rights-of-way. Second will be Highway construction, etc. to match listing in Manual.

Comment [s22]: Insert ", as amended"

Comment [s23]: Delete "licensed under article . . . Maryland,"

generating stations licensed under article 78, §§ 54A and 54B or § 54-I, Annotated Code of Maryland, if:

Comment [s24]: Delete "under article . . . 54-I" and insert "pursuant to Section 7-204, 7-205, 7-207 or 7-208 of the Public Utility Companies Article".

- a. Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, § 5-1603(f), Annotated Code of Maryland; and
- b. Cutting or clearing of the forest is conducted to minimize the loss of forest.

Comment [s25]: Insert ", as amended"

Comment [s26]: Insert ", as amended"

(2) *Exemptions requiring a Declaration of Intent:* The following development is exempt from the requirements of this Subtitle, provided that the developer files a Declaration of Intent with the Department as provided in subsection (c) below:

Comment [s27]: Add a new exemption "(xii) Howard County capital improvement projects (including those with partial State funding) provided that the activity is conducted on a single lot of any size, the activity does not result in the cutting, clearing or grading of more than 20,000 square feet of forest, and the impacted forest is not subject to a previously approved Forest Conservation Plan. "

(i) Development on an existing single lot of any size if:

Comment [s28]: Insert "Residential" and replace "D" with "d".

- a. The total cutting, clearing or grading of forest resources is less than 40,000 square feet; and
- b. The forest resources affected by the development are not subject to a previously approved Forest Conservation Plan;

Comment [s29]: Replace 40,000 with 20,000 per recent change to State law.

(ii) Commercial logging and timber harvesting operations conducted subject to the forest conservation and management program under the Tax-Property Article § 8-211, Annotated Code of Maryland;

Comment [s30]: Insert ", as amended"

(iii) Any agricultural activity, including agricultural support buildings and structures built using accepted best management practice involving the clearing of 40,000 square feet or greater of forest within a 1-year period; and

Comment [s31]: Replace 40,000 with 20,000 per recent change to State law.

(iv) Subdivision in connection with real estate transactions to provide a security, leasehold, or other legal or equitable interest, including a transfer of Title, of a portion of a lot or parcel, if:

- a. The transaction does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and
- b. Both the grantor and grantee file the Declaration of Intent.

Comment [s32]: Insert new exemption "(v) Linear projects that are not exempt and that disturb less than 20,000 square feet of forest, if the impacted forest is not subject to a previously approved Forest Conservation Plan. "

(c) **Declaration of Intent:**

- (1) A person seeking an exemption under subsection (b) above shall submit a Declaration of Intent to the Department to verify that the proposed activity is exempt.
- (2) No regulated activity may occur on the area covered by the Declaration of Intent within 5 years of the completion of cutting, clearing or grading of forest resources, or in the case of real estate transactions, within 5 years of the effective date of the Declaration of Intent.
- (3) The Department may require a person failing to file a Declaration of Intent or found not in compliance with a Declaration of Intent to:

- (i) Meet the retention, reforestation and afforestation requirements established by this Subtitle;
- (ii) Pay a penalty fee established by fee schedules approved by resolution of the county council per square foot of forest cut or cleared, but in no case less than the minimum set by state law;
- (iii) Be subject to other enforcement actions appropriate under Natural Resources Article §§ 5-1601--5-1612, Annotated Code of Maryland, and this Subtitle; and/or
- (iv) File a Declaration of Intent with the Department.

Comment [s33]: Capitalize County Council

Comment [s34]: Change 1612 to 1613

Comment [s35]: Insert “, as amended”

(C.B. 4, 1996)

Section 16.1203. Forest Conservation Manual.

The Howard County Forest Conservation Manual is the technical manual used to establish standards of performance required in preparing forest stand delineations and Forest Conservation Plans. The Forest Conservation Manual and amendments to it are prepared by the Department of Planning and Zoning and adopted by resolution of the County Council.

The manual includes specific standards and guidelines for:

- (a) Submission of Forest Conservation Plans, including forest stand delineations;
- (b) Approval of Forest Conservation Plans;
- (c) Forest retention priorities;
- (d) Reforestation and afforestation calculations, priorities and preferred methods;
- (e) Construction and maintenance agreements and financial security;
- (f) Long-term, binding forest conservation and management agreements;
- (g) Procedural variations for minor subdivisions, single lot site development plans, rural cluster subdivisions, and phased development;
- (h) Forest mitigation banking; and
- (i) Other information necessary to implement this Subtitle.

Comment [s36]: Delete “Construction and maintenance” and insert “Forest conservation”.

Comment [s37]: Delete “Long-term, binding forest conservation and management agreements” and insert “Deed of forest conservation easements”.

Comment [s38]: Insert “Except as expressly provided in this Subtitle, plans or permits listed in Section 16.1202(a)(1)-(4) shall be regulated by the Manual existing prior to the amendments approved and enacted on _____, 2011, if Sketch Plans or Preliminary Equivalent Sketch Plans were signed or approved on or before _____, 2011. In the event that the plan fails to be finally approved, then the plan should be resubmitted under the Forest Conservation Act of Howard County and the Manual as amended.”

(C.B. 4, 1996)

Section 16.1204. Forest Conservation Plan.

- (a) **Applicability:** Forest Conservation Plans, consistent with this Subtitle and the Howard County Forest Conservation Manual, shall be submitted to the Department with applications for all development not exempt under Section 16.1202(b).
- (b) **Professionally Prepared:** The Forest Conservation Plan shall be prepared by a licensed forester, landscape architect or other qualified professional as defined in the Forest Conservation Manual.
- (c) **Forest Stand Delineation:** The Forest Conservation Plan shall include a forest stand delineation for the property to be subdivided, developed, or graded. The forest stand delineation shall:
 - (1) Describe the extent and quality of existing forests and other vegetation and its relationship to environmentally sensitive areas on-site and to forest resources on adjacent properties.
 - (2) Be used during the review process to determine the most suitable and practical areas for forest conservation.
- (d) **Forest Conservation Plan:** A Forest Conservation Plan shall:
 - (1) State the net tract area, area of forest conservation required and the area of forest conservation proposed on-site and/or off-site;
 - (2) Show the proposed limits of disturbance;
 - (3) Show locations for proposed retention of existing forest and/or proposed reforestation or afforestation;
 - (4) Justify the following, if existing forest cannot be retained:
 - (i) How techniques for forest retention have been exhausted;
 - (ii) Why the priority forests specified in Section 16.1205 cannot be left in an undisturbed condition;
 - (iii) If priority forests and priority areas cannot be left undisturbed, where on the site in priority areas reforestation or afforestation will occur in compliance with Section 16.1208(a);
 - (iv) How the sequence for preferred reforestation or afforestation methods will be followed in compliance with Section 16.1208(b); and
 - (v) Why reforestation or afforestation requirements cannot reasonably be accomplished on- or off-site, if the applicant proposes payments of an in-lieu fee to the forest conservation fund;

Comment [s39]: Delete Howard County.

Comment [s40]: Delete "(b)"

Note: The references to other sections in the County Code have been changed to just reference the general section, without subheading specifics so that when the specifics change, the references will not need updating.

Comment [s41]: Delete "defined in the Forest Conservation Manual" and insert "specified in COMAR 08.19.06.01".

Comment [s42]: Add "An approved forest stand delineation is valid for 5 years."

Comment [s43]: Delete "(a)"

Comment [s44]: Insert new "(iv) How site design requirements will be followed to maximize meeting forest conservation obligations on-site in compliance with Section 16.1209." Renumber remaining subsections.

Comment [s45]: Insert "location and"

Comment [s46]: Delete "(b)"

- (5) Show proposed locations and types of protective devices to be used during construction to protect trees and forests designated for conservation;
- (6) In the case of reforestation or afforestation, include a reforestation or afforestation plan, with a timetable, description of needed site and soil preparation, and the species, size, and spacing of plantings;
- (7) Include a binding 2-year maintenance agreement as specified in the manual that details how the areas designated for retention, reforestation or afforestation will be maintained to ensure protection and satisfactory establishment, including a reinforcement planting provision if survival rates fall below required standards. Financial security shall be provided for the maintenance agreement as provided in Section 16.1209 and the manual. Minor subdivisions which meet forest conservation requirements entirely by forest retention are not required to have a two year maintenance agreement;
- (8) Include a long term, binding forest conservation and management agreement with a plat of the forest conservation easement area, as specified in the manual that:
 - (i) Provides protection for areas of forest retention, reforestation and afforestation; and
 - (ii) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
- (9) Include other information the Department determines is necessary to implement this Subtitle; and
- (10) Be amended or a new plan prepared, as provided in the manual, if required as a result of changes in the development or in the condition of the site.

(C.B. 4, 1996; C.B. 13, 1999)

Section 16.1205. Forest Retention Priorities.

- (a) **On-site Forest Retention:** The following vegetation and specific areas are considered priority for on-site retention and protection in the county. Subdivision, site development, and grading shall leave this vegetation and these specific areas in an undisturbed condition unless demonstrated, to the satisfaction of the Department, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered or that forest planting in an alternate location would have greater environmental benefit:
 - (1) 100-year floodplain and stream buffers as defined in Section 16.108(23) and (53) and 16.116(c)(6) of the Subdivision Regulations;

Comment [s47]: Delete "binding 2-year maintenance" and insert "minimum two growing season forest conservation".

Comment [s48]: Delete "maintenance" and insert "forest conservation".

Comment [s49]: Change 16.1209 to 16.1210

Comment [s50]: Delete "two year maintenance" and insert "forest conservation".

Comment [s51]: Delete "long term, binding forest conservation and management agreement" and insert "deed of forest conservation easement".

Comment [s52]: Insert ", in perpetuity,"

Comment [s53]: Capitalize County

Comment [s54]: Delete "this" and insert "the following"

Comment [s55]: Delete "these"

Comment [s56]: Insert a period then insert the following:
 (1) Trees and other vegetation identified on the lists of rare, threatened and endangered species of the U.S. Fish and Wildlife Service or the Department of Natural Resources.
 (2) Trees and other forest resources associated with an historic site.
 (3) State champion trees, trees 75% of the diameter of state champion trees, and trees 30" in diameter or larger.

Subdivision, site development, and grading shall leave the following vegetation and specific areas in an undisturbed condition

Comment [s57]: Separate these into two items. "(1) 100-year floodplain as defined in Section 16.108 and 16.115. " and "(2) Stream bank buffers as defined in Section 16.116." Note that reference to Section 16.108 is deleted from the stream bank buffer description. Renumber remaining items in list.

- (2) Forested wetlands and wetland buffers as defined in Section 16.108(6) and 16.116(c)(6) of the Subdivision Regulations;
- (3) Trees and other vegetation identified on lists of rare, threatened and endangered species of the U.S. Fish and Wildlife Service or the Department of Natural Resources, critical habitat areas, and forest corridors for wildlife movement;
- (4) Steep slopes as defined in Section 16.108(50) of the Subdivision Regulations;
- (5) Forest not in any of the sensitive areas above, but contiguous with sensitive areas or with existing forest stands;
- (6) Property line and right-of-way buffers, particularly adjacent to scenic roads;
- (7) State champion trees, trees 75% of the diameter of state champion trees, and trees 30" in diameter or larger;
- (8) Trees and other forest resources associated with an historic site;
- (9) Isolated small forest stands or tree groves of less than 10,000 square feet that will be enlarged to meet minimum standards for forest; and
- (10) Specimen trees not part of any of the above.

Comment [s58]: Delete "(6)"

Comment [s59]: Delete "(c)(6)"

Comment [s60]: Delete "Trees and other vegetation identified on lists of rare, threatened and endangered species of the U.S. Fish and Wildlife Service or the Department of Natural Resources, c" and insert "C".

Comment [s61]: Delete "(50)" and insert "and 16.116".

Comment [s62]: Insert "and slopes of 15% or greater with a soil erodibility factor greater than 0.35."

Comment [s63]: Separate into two items. "Forest contiguous with the priority areas listed previously." And "Forest contiguous with off-site forest, if the off-site forest is also protected by a Forest Conservation Easement." Renumber remaining items.

Comment [s64]: Delete items 7 through 10. Small areas of trees are in a separate discussion in the Manual about saving for aesthetic value or increasing with planting to meet minimum size requirements.

Comment [s65]: Capitalize County

(b) **Off-site Retention:**

- (1) The county or a developer may provide for off-site forest retention at a ratio of 2 acres of forest retention for every 1 acre of forest conservation obligation.
- (2) The vegetation and specific area priorities for locating off-site forest retention under this subsection are the same as provided under subsection (a) of this Section.

(C.B. 51, 1994; C.B. 4, 1996; C.B. 13, 1999)

Section 16.1206. Reforestation.

- (a) **Requirement to Reforest Areas Which Have Been Cut or Cleared:** The Forest Conservation Plan shall provide for:
 - (1) On- or off-site reforestation to replace forest which is proposed to be cut or cleared on the net tract area after reasonable efforts to minimize such cutting or clearing; or
 - (2) Payment-in-lieu of reforestation if reforestation cannot reasonably be accomplished.
- (b) **Minimum Size:** Areas to be reforested shall be at least 10,000 square feet unless otherwise approved by the Department based on criteria in the Forest Conservation Manual.

(c) **Calculating the Amount of Reforestation Required:** The amount of reforestation required depends upon the amount of forest cover existing and removed from the net tract area and the land use being developed. The reforestation requirement shall be calculated as follows:

(1) **Reforestation threshold:** There is a reforestation threshold for all land use categories. The reforestation threshold establishes the percentage of the net tract area at which the reforestation requirement changes. Reforestation requirements for clearing forest below the threshold are greater than for clearing above the threshold. Thresholds for calculating reforestation requirements are as follows:

Land Use	Threshold
Residential: Rural Low Density (Residential lots average 5 acres or more)	50%
Residential Rural Medium Density (Residential lots average 1 to 4.99 acres)	25%
Residential Suburban (Less than 1 acre per dwelling unit)	20%
Commercial/Industrial/Office	15%
Institutional	20%

Comment [s66]: Delete "Commercial/Industrial/Office" and insert "Retail, Industrial or Office"

Comment [s67]: Switch the order of Institutional and Commercial so thresholds are listed in descending order of value. Add "or Linear" here and add another Land Use category for Mixed Use Development or Planned Unit Development at 15%.

(2) **Reforestation calculation:** For all existing forest cover cleared on the net tract area, measured to the nearest 1/10 acre, the reforestation requirement shall be calculated as follows:

- (i) 1/4 acre shall be reforested, for each acre or portion of an acre cleared above the threshold (1/4:1 ratio).
- (ii) 2 acres shall be reforested for each acre or portion of an acre cleared below the threshold (2:1 ratio).
- (iii) All forest acreage retained above the threshold shall be directly credited against any reforestation obligation (1:1 ratio).

Section 16.1207. Afforestation.

(a) **Requirement To Afforest:** If existing forest resources are below the following minimums, the Forest Conservation Plan shall provide for:

- (1) Afforestation on-site or off-site; or
- (2) Payment-in-lieu of afforestation if afforestation cannot reasonably be accomplished.

(b) **Minimum Size:** Areas to be afforested shall be at least 10,000 square feet unless otherwise approved by the Department based on criteria in the manual.

(c) **Calculating the Amount of Afforestation Required:** The amount of afforestation required depends upon the amount of forest cover existing and removed from the net tract area and the land use being developed. The afforestation requirement shall be calculated as follows:

- (1) Minimum forest cover: For each land use, the following minimum percentage of forest cover shall be provided:

Land Use	Threshold
Residential: Rural Low Density (Residential lots average 5 acres or more)	20%
Residential Rural Medium Density (Residential lots average 1 to 4.99 acres)	20%
Residential Suburban (Less than 1 acre per dwelling unit)	15%
Commercial/Industrial/Office	15%
Institutional	20%

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

Comment [s68]: Delete "Commercial/Industrial/Office" and insert "Retail, Industrial or Office"

Comment [s69]: Switch the order of Institutional and Commercial so thresholds are listed in same order as reforestation thresholds. Add "or Linear" here and the threshold should be 15% according to State law and our Manual. Also add another category for Mixed Use Development or Planned Unit Development at 15%.

Section 16.1208. Reforestation and Afforestation Location Priorities and Preferred Methods.

(a) **Location Priorities:** The following are priority locations for reforestation and afforestation. The Department may approve lower priority locations on this list when such locations better achieve the intent of this Subtitle or county land use regulations. If on-site planting would have greater environmental benefit, the Department may approve off-site reforestation or afforestation in high-priority locations within Howard County, preferable within the same subbasin or watershed:

Comment [s70]: Change section title: Reforestation and Afforestation Location Priorities, Preferred Location and Preferred Methods.

Comment [s71]: Capitalize County

Comment [s72]: Delete "on-site" and insert "off-site"

- (1) Establish or enhance forest in 100-year floodplains and buffers to intermittent and perennial streams as defined in Sections 16.108(23) and (53) and 16.116(a) of the Subdivision Regulations;
- (2) Establish or enhance forest in wetlands and 25-foot wetland buffers as defined in Sections 16.108(60) and 16.116(c)(6) of the Subdivision Regulations;
- (3) Establish or enhance critical habitat buffers and forest corridors for wildlife movement, the corridors, where practical, being a minimum of 300 feet in width;
- (4) Establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35;
- (5) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover;

Comment [s73]: Delete "(23) and (53)" and insert ", 16.115".

Comment [s74]: Delete "(a)"

Comment [s75]: Delete "(60)"

Comment [s76]: Delete (c)(6)

- (6) Establish buffers along property lines between differing land uses when appropriate, or adjacent to highways or utility rights-of-way, particularly adjacent to scenic roads; and
- (7) Establish forest areas between small forest and tree stands to build a forest community.

Comment [s77]: Switch the order of (6) and (7) to match Manual.

(b) **Preferred Methods:** The following sequence of reforestation and afforestation methods is preferred. The Department of planning and zoning may approve less preferred methods on this list when such methods better achieve the location priorities for reforestation and afforestation, take better advantage of opportunities to consolidate forest conservation efforts, or better achieve the objectives of other county land use regulations.

Comment [s78]: We changed this in the Manual to first specify preferred location and then preferred method, so will need to break this into two subsections to mirror Manual.

- (1) Selective clearing and supplemental planting on-site;
- (2) On-site 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) On-site 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 25,000 square feet in area;
- (5) Off-site 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) Off-site afforestation or reforestation, using whip and seedling stock;
- (7) Natural regeneration on-site; and
- (8) Natural regeneration off-site.

Delete old section (b).

Insert new section (b):

Preferred Location: The following is the preferred sequence for location of reforestation and afforestation. The Department of Planning and Zoning may approve less preferred locations when such locations better achieve the location priorities for reforestation and afforestation, take better advantage of opportunities to consolidate forest conservation efforts, or better achieve the objectives of other County land use regulations.

- (1) On site
- (2) Mitigation bank
- (3) Off site"

Insert new section (c)

Preferred Methods: The following sequence of reforestation and afforestation methods is preferred. The Department of Planning and Zoning may approve less preferred methods when such methods will better achieve forest survival.

- (1) Planting with nursery stock
- (2) Transplant of local plant material.
- (3) Natural regeneration
- (4) Selective clearing and supplemental planting."

(C.B. 51, 1994; C.B. 4, 1996)

Comment [s79]: Insert new section, renumber remaining sections and update section references.

16.1209. Site Design Requirements.

Site design should address the Forest Conservation Program goals of maximizing forest retention and meeting forest conservation obligations on-site. Before mitigation banks, off-site compliance or fee-in-lieu requests will be considered, forest conservation obligations shall be met on-site, in accordance with the following site design requirements:

- (1) Nonresidential developments shall accommodate forest conservation obligations on-site by establishing Forest Conservation Easements with retained or planted forest in all sensitive areas, including floodplains, wetlands, wetland buffers, steep slopes and stream buffers. To ensure protection of riparian areas, the Forest Conservation Easements shall be a minimum 75-foot width from the banks of any perennial and intermittent stream. The area between the required stream buffer and the Forest Conservation Easement may be disturbed during construction.
- (2) Residential developments shall meet a minimum of 75% of their obligation on-site by reducing lot sizes, clustering lots and maximizing open space to the maximum extent permitted by the Subdivision and Land Development Regulations. Infill subdivisions of ten lots or less are exempt from this requirement.
- (3) Residential developments in the RC or RR zoning districts shall accommodate all forest conservation obligations within the boundaries of a receiving property before importing development density.
- (4) To ensure adequate setbacks from Forest Conservation Easements on residential lots, a 35-foot setback shall be provided from a rear lot line for a detached or attached dwelling unit and any on-site or off-site planted Forest Conservation Easement. The setback may be eliminated if larger stock (two rows of one-inch minimum caliper) is planted along the edge of the Forest Conservation Easement.

Section 16.1209. Financial security for reforestation and afforestation.

- (a) **Financial Security Required:** Subject to subsection (b) of this Section, a person required to provide retention, afforestation or reforestation under this Subtitle shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the county. This shall be provided prior to plat recordation if the afforestation or reforestation is required for approval of a subdivision; prior to site development plan approval if the afforestation or reforestation is required for site development plan approval; and prior to grading permit issuance if the afforestation or reforestation is required for issuance of a grading permit. The surety shall:
- (1) Assure that the afforestation, reforestation, and the associated maintenance agreement are implemented in accordance with the approved Forest Conservation Plan;
 - (2) Be in an amount equal to the estimated cost, as approved by the county, of reforestation and afforestation; and
 - (3) Be in a form and of a content approved by the county.
- (b) **Exception for Minor Subdivisions:** Minor subdivisions that meet forest conservation requirements entirely by forest retention are not required to provide financial security.
- (c) **Reduction of Financial Security:** After 1 growing season following the afforestation or reforestation the county may, at the written request of the person required to file financial security, reduce the amount of the bond or other financial security. The request shall provide a justification for reducing the bond or other financial security amount, in accordance with criteria by the county.
- (d) **Release of Financial Security:** If, after 2 growing seasons following the afforestation or reforestation or as provided in the maintenance agreement, the plantings associated with the afforestation or reforestation meet or exceed the standards of the manual, the amount of the bond, letter of credit, or other security shall be returned or released.
- (e) **Default and Lien:** If, after 2 growing seasons or as provided in the maintenance agreement, the plantings do not meet the aforesaid standards, the county shall have the right to draw on the security according to its terms and use the sums withdrawn for the costs incurred by the county in achieving the afforestation or reforestation standards required by the plan and manual. Any costs incurred by the county in excess of the security amount shall be charged against the developer and, unless they are paid or appealed to the board of appeals within 30 days after billing by the county, shall become a final lien against the property being developed and shall in every respect be treated as county real estate taxes.

(C.B. 4, 1996)

Section 16.1210. Fee-in-lieu of afforestation or reforestation.

Comment [s80]: Change 16.1209 to 16.1210

Comment [s81]: Delete "Subject to subsection (b) of this Section, a" and insert "A".

Comment [s82]: Delete "retention,"

Comment [s83]: Capitalize County

Comment [s84]: Delete "surety" and insert "security"

Comment [s85]: Delete "maintenance" and insert "forest conservation".

Comment [s86]: Capitalize County

Comment [s87]: Capitalize County

Comment [s88]: Delete subsection (b), since we no longer require security for retention easements.

Comment [s89]: Delete subsection (c), partial surety releases were eliminated. Renumber remaining subsections.

Comment [s90]: Delete "maintenance" and insert "forest conservation"

Comment [s91]: Delete "maintenance" and insert "forest conservation"

Comment [s92]: Capitalize all 5 references to County and the Board of Appeals.

Comment [s93]: Change 16.1210 to 16.1211

(a) **Fee-In-Lieu Authorized:**

- (1) The Department may approve the payment of a fee-in-lieu-of afforestation or reforestation:
 - (i) When afforestation or reforestation requirements cannot be reasonably accomplished on-site or off-site based on criteria in the manual; or
 - (ii) When a landowner requests a modification of a recorded forest conservation easement.
- (2) The fee-in-lieu-of shall be calculated on a square-foot basis at a rate established in the fee scheduled adopted by resolution of the county council, but in no event shall it be less than the minimum set by state law.

Comment [s94]: Delete "d"

Comment [s95]: Capitalize County Council

Comment [s96]: Add: The fee-in-lieu-of shall be 20% higher outside the Priority Funding Area. Residential subdivisions may request a fee-in-lieu for no more than one acre of forest conservation obligation.

Comment [s97]: Capitalize County

(b) **Timing - Payment of Fee-In-Lieu: Fee-in-lieu-of payments shall be paid to the county:**

- (1) For a project not subject to a recorded forest conservation easement, prior to plat recordation of a subdivision, prior to approval of a site development plan or, if none, prior to issuance of a grading permit; or
- (2) When a landowner requests a modification of a recorded forest conservation easement, prior to the recordation of the revised subdivision plat or plat of forest conservation easement.

(C.B. 13, 1999)

Section 16.1211. Forest Conservation Fund.

Comment [s98]: Change 16.1211 to 16.1212

- (a) **Fund Established:** The Director of Finance shall establish an account to be known as the forest conservation fund. No monies deposited in this account may revert to the general fund.
- (b) **Source of Moneys in Forest Conservation Fund:** Fees paid in-lieu-of reforestation or afforestation under Section 16.1210 of this Subtitle and noncompliance fees paid pursuant to subSection (c) of this Section shall be deposited in the forest conservation fund. Interest earned by money in the forest conservation fund shall remain in the fund.
- (c) **Noncompliance Penalties:** The noncompliance penalty is a fine per square foot of forest cut, cleared or graded which may be assessed against violators of this Subtitle as specified in Section 16.1212 of this Subtitle. The amount of the noncompliance penalty is set by resolution of the county council, and in no event shall it be less than the minimum set by state law.
- (d) **Use of Forest Conservation Fund:**
 - (1) The minimum in-lieu-of fees established by the state may be expended by the county:

Comment [s99]: Change 16.1210 to 16.1211

Comment [s100]: Delete capital S and insert small s.

Comment [s101]: Change 16.1212 to 16.1213

Comment [s102]: Capitalize County Council

Comment [s103]: Capitalize County

- (i) For afforestation or reforestation within Howard County, including site identification, acquisition, and preparation; and
 - (ii) For acquisition of forest retention easements.
- (2) In-lieu-of fees above the state minimums and noncompliance penalties may be used by the county for any purposes related to implementation of the county forest conservation program.

Comment [s104]: Delete “and”

Comment [s105]: Add: (iii) For maintenance of existing forests; and (iv) For achieving urban canopy goals.

Comment [s106]: Capitalize both references to County

(C.B. 13, 1999)

Comment [s107]: Change 16.1212 to 16.1213

Section 16.1212. Enforcement; Penalties.

The provisions of this Subtitle may be enforced with any or all of the following measures:

- (a) **Revocation of Exemption:** The Department may revoke an exemption for properties that are in violation of the conditions of exemption set forth in Section 16.1202(b) above and may require compliance with the retention, reforestation and afforestation requirements of this Subtitle. Prior to revocation, the Department shall notify the violator in writing and provide an opportunity for a response.
- (b) **Revocation of Approved Forest Conservation Plan:** The Department may revoke an approved Forest Conservation Plan for cause, including any of the following conditions. Prior to revocation, the Department shall notify the violator in writing and provide an opportunity for a response.
 - (1) Noncompliance with this Subtitle or with conditions of an approved Forest Conservation Plan;
 - (2) Obtaining approval of the plan through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact.
- (c) **Stop-Work Order:** The county may issue a stop-work order against any violator of this Subtitle, the manual, an order, an approved Forest Conservation Plan, the associated 2-year maintenance agreement and long-term conservation and management agreement, or a Declaration of Intent.
- (d) **Injunction:** The county may seek an injunction requiring a violator to cease the violation and take corrective action to restore or reforest an area.
- (e) **Noncompliance Penalties:** The county may assess a noncompliance penalty as defined in Section 16.1211 above, against a violator of this Subtitle, the manual, an order, an approved Forest Conservation Plan, an associated 2-year maintenance agreement, a long-term conservation and management agreement or a Declaration of Intent.
- (f) **Civil Penalties:** In addition to and concurrent with all other remedies, the Department of Planning and Zoning may enforce the provisions of this Subtitle or an approved Forest Conservation Plan with civil penalties pursuant to the provisions of Title 24, “Civil Penalties,”

Comment [s108]: Delete the period and insert a colon.

Comment [s109]: Move this last sentence to the end of subsection (b), so it comes after (1) and (2).

Comment [s110]: Delete the semicolon and insert a period.

Comment [s111]: Capitalize County

Comment [s112]: Delete “2-year maintenance” and insert “forest conservation”

Comment [s113]: Delete “conservation and management agreement” and insert “deed of forest conservation easement”

Comment [s114]: Capitalize County

Comment [s115]: Capitalize County

Comment [s116]: Change 16.1211 to 16.1212.

Comment [s117]: Delete “2-year maintenance” and insert “forest conservation”

Comment [s118]: Delete “conservation and management agreement” and insert “deed of forest conservation easement”

of the Howard County Code. A violation shall be a class A offense. Each day a violation continues is a separate violation.

Section 16.1213. Mitigation by County.

In the event that any person develops land in violation of this Subtitle without an approved Forest Conservation Plan and any other required development approvals and permits, the county shall, after first giving the developer the opportunity to comply, have the right to enter upon the property being developed and afforest or reforest the property in accordance with the thresholds and standards of this Subtitle and the manual. The county may instead undertake off-site afforestation or reforestation if this would better serve the purposes of this Subtitle. In either case, the county shall charge all afforestation and reforestation costs incurred by it against the developer, including but not limited to consultant fees and overhead and administrative costs. Unless the charges are paid or appealed to the Board of Appeals within 30 days after billing by the County, they shall become a final lien on the property being developed and shall in every respect be treated as county real estate taxes. The County's right to mitigate and recover its costs shall be in addition to the fines and other sanctions it may impose under Section 16.1212 of this Subtitle.

Section 16.1214. Appeals.

Any person specially aggrieved, as defined by Section 16.103(b) of the Howard County Code, by an administrative decision of the Director of Planning and Zoning in relation to this Subtitle may, within 30 days of the decision, appeal the decision to the Howard County Board of Appeals according to its Rules of Procedure.

Section 16.1215. Waivers.

- (a) The Department may grant waivers to the requirements of this Subtitle in accordance with the standards and procedures of Section 16.103(c) of the Subdivision Regulations, provided that the Department must find that granting of the waiver will not adversely affect water quality.
- (b) Notice of a request for a waiver shall be given by the Department of planning and zoning to the Maryland Department of Natural Resources within 15 days of receipt of a request for a waiver.

Comment [s119]: Change 16.1213 to 16.1214

Comment [s120]: Change 16.1212 to 16.1213 and capitalize all references to County.

Comment [s121]: Change 16.1214 to 16.1215

Comment [s122]: This section addresses DPZ Responsible for Final Action. Delete "16.103(b) and insert "16.105", which addresses Appeals.

Comment [s123]: Change 16.1215 to 16.1216

Comment [s124]: This section addresses Plans Approved if They Comply with Requirements. Delete "16.103(c)" and insert "16.104", which addresses Waivers

Comment [s125]: Delete this section and substitute the following:
Notice of a request for a complete waiver of the Forest Conservation Program shall be given by the Department of Planning and Zoning to the Maryland Department of Natural Resources within 15 days of receipt of a request for a waiver. Notice of a request for a waiver to individual program requirements, temporary deferral, phasing of obligations or seeking alternative compliance with the Forest Conservation Program requirements shall be given by the Department of Planning and Zoning to the Maryland Department of Natural Resources after a decision on the waiver request is rendered by the Department of Planning and Zoning.

Section 16.1216. Forest Mitigation Banking.

- (a) **Opportunity to Create a Forest Mitigation Bank:** The Howard County Department of Recreation and Parks or a private property owner with the Department of planning and zoning's approval, may establish a forest mitigation bank. Mitigation bank easement rights may be purchased by a developer when the Department of planning and zoning determines that all or a portion of a project's reforestation or afforestation obligations can be met off-site and that the mitigation bank has met all requirements.
- (b) **Minimum Size:** Mitigation banks shall be at least one acre in area unless otherwise approved by the Department.
- (c) **Location Priorities:** Forest mitigation banks shall be located in accordance with the highest five reforestation and afforestation priorities specified in Section 16.1208(a)(1) through (5) of this Subtitle.
- (d) **Preferred Methods:** Forest mitigation banks shall be planted using nursery stock, whips, or seedlings, but not natural regeneration.
- (e) **Approval Procedure:** Private forest mitigation bank applicants shall submit for the Department's approval the proposed location and a forest planting plan, prepared by a qualified professional, with a timetable, description of needed site and soil preparation, and the species, size, and spacing of planting. Upon completion of all forest planting, the qualified professional shall certify compliance with the approved Forest Conservation Plan.
- (f) **Long-Term, Binding Forest Conservation and Management Agreement:** At the end of two years, or longer if required, a qualified professional shall certify that the survival rates specified in the manual have been achieved. The applicant shall record a forest conservation easement plat and long-term binding forest conservation and management agreement in accordance with procedures outlined in the manual.

(C.B. 4, 1996)

Section 16.1217. Severability.

If any Section, subsection, sentence, clause, phrase or portion of this Subtitle is held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision; and the holding shall not affect the validity of the remaining portions of the Subtitle.

Comment [s126]: Change 16.1216 to 16.1217

Comment [s127]: Changes were made to this section to accommodate retention mitigation banks.

Comment [s128]: Capitalize Planning and Zoning here and in next sentence.

Comment [s129]: Insert "retention,"

Comment [s130]: Insert "Forest retention mitigation banks shall be located in accordance with the highest seven retention priorities specified in Section 16.1205 of this Subtitle." Need to coordinate this reference with the reordering in Section 16.1205 to separate the three areas subject to a waiver. Next sentence, insert "Planted" and delete "F" and insert "P".

Comment [s131]: Delete "(a)(1) through (5)"

Comment [s132]: Insert "Planted" and delete "F" and insert "P".

Comment [s133]: Delete "planting" and insert "conservation"

Comment [s134]: Delete the remainder of this sentence after "forest conservation plan".

Comment [s135]: Insert "the installation of all protection devices and"

Comment [s136]: Insert "as required"

Comment [s137]: Delete "qualified professional" and insert "County".

Comment [s138]: Add sentence "At the end of the minimum two growing seasons, or longer if required, the County shall certify that the survival rates specified in the Manual have been achieved."

Comment [s139]: Insert new section (f) "Forest Conservation Agreement and Financial Security: Planted forest mitigation banks shall execute a Forest Conservation Agreement and post a financial security."

Comment [s140]: This is new section (g). Delete "Long-Term, Binding Forest Conservation and Management Agreement" and insert "Deed of Forest Conservation Easement"

Comment [s141]: Delete first sentence.

Comment [s142]: Delete "long-term binding forest conservation and management agreement" and insert "a deed of forest conservation easement"

Comment [s143]: Change 16.1217 to 16.1218