

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2019 Legislative Session

Legislative Day No. **62**

Bill No. 62 -2019

Introduced by: The Chairperson at the request of the County Executive and
Cosponsored by Opel Jones, Deb Jung, Christiana Mercer Rigby, and Liz Walsh

AN ACT repealing and reenacting the Forest Conservation Act of Howard County; providing the purpose of the Act; defining certain terms to be used throughout the Act; requiring a Forest Conservation Plan for any person, or unit of local government, developing land 40,000 square feet or greater, subject to certain exceptions; requiring a Declaration of Intent for certain exemptions; setting forth the requirements of a Forest Conservation Plan; providing for the review process of a Forest Conservation Plan; requiring a Forest Conservation Manual to be prepared and adopted; requiring that the Manual include specific standards and guidelines; setting forth certain Forest Retention Priorities; requiring certain reforestation requirements and providing that reforestation shall be based on certain calculations; requiring certain afforestation and providing that afforestation shall be based on certain calculations; setting forth certain afforestation and reforestation location priorities and preferred methods; requiring certain site design; requiring certain financial security for afforestation and reforestation; authorizing a fee-in-lieu of afforestation and reforestation under certain conditions; providing for Forest Conservation Fund to keep the fee-in-lieu of afforestation and reforestation and providing for the use of monies contained in the fund; providing for certain enforcement and penalties; requiring mitigation by the County when land is developed in violation of the Act; providing for certain appeals; allowing for the grant of variances of the provisions of the Act, under certain circumstances; allowing the abandonment of Forest Conservation Easements under certain conditions; providing for the opportunity to create a Forest Mitigation Bank under certain conditions; and generally related to forest conservation in Howard County.

Introduced and read first time _____, 2019. Ordered posted and hearing scheduled.

By order _____
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2019.

By order _____
Diane Schwartz Jones, Administrator

This Bill was read the third time on _____, 2019 and Passed ____, Passed with amendments ____, Failed ____.

By order _____
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2019 at ____ a.m./p.m.

By order _____
Diane Schwartz Jones, Administrator

Approved/Vetoed by the County Executive _____, 2019

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

Section 1. *Be It Enacted* by the County Council of Howard County, Maryland, that the Howard County Code is amended as follows:

By repealing and reenacting:

Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations
Subtitle 12. Forest Conservation.

Title 16. Planning, Zoning, and Subdivisions and Land Development Regulations.

SUBTITLE 12. FOREST CONSERVATION.

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 TITLE 5, SUBTITLE 16 OF THE NATURAL RESOURCES ARTICLE 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.

SECTION 16.1201. DEFINITIONS.

EXCEPT AS PROVIDED IN SUBSECTION (FF) OF THIS SECTION, WORDS AND PHRASES USED IN THIS SUBTITLE HAVE THEIR USUAL MEANING UNLESS DEFINED IN THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS AS SET FORTH IN SUBTITLE 1 OF THIS TITLE OR AS FOLLOWS IN THIS SECTION:

(A) **AFFORESTATION:** "AFFORESTATION" MEANS THE ESTABLISHMENT OF NEW FOREST ON AN AREA PRESENTLY WITHOUT FOREST COVER, BY PLANTING IN ACCORDANCE WITH THE PRACTICES SPECIFIED IN THE FOREST CONSERVATION MANUAL.

(B) **COMAR:** "COMAR" MEANS THE CODE OF MARYLAND REGULATIONS.

(C) **CRITICAL HABITAT AREA:** "CRITICAL HABITAT AREA" MEANS A CRITICAL HABITAT FOR THREATENED OR ENDANGERED SPECIES AND ITS SURROUNDING PROTECTION AREA. A CRITICAL HABITAT SHALL:

- (1) BE LIKELY TO CONTRIBUTE TO THE LONG-TERM SURVIVAL OF THE SPECIES;
- (2) BE LIKELY TO BE OCCUPIED BY THE SPECIES FOR THE FORESEEABLE FUTURE; AND
- (3) CONSTITUTE HABITAT OF THE SPECIES WHICH IS DEEMED CRITICAL UNDER TITLE 4, SUBTITLE 2A OR TITLE 10, SUBTITLE 2A OF THE NATURAL RESOURCE ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

(D) **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.

(E) **DEPARTMENT:** "DEPARTMENT" MEANS THE HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING.

(F) **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.

(G) **FOREST:** "FOREST" MEANS A BIOLOGICAL COMMUNITY DOMINATED BY NATIVE TREES AND OTHER WOODY PLANTS COVERING AN AREA OF 10,000 SQUARE FEET OR GREATER THAT IS AT LEAST 50 FEET WIDE. "FOREST" INCLUDES:

- (1) AREAS WITH A COVER RATIO OF 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
- (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.

(H) **FOREST CONSERVATION:** "FOREST CONSERVATION" MEANS THE RETENTION OF EXISTING FOREST OR THE CREATION OF NEW FOREST AT THE LEVELS SET BY THIS SUBTITLE.

1 (I) **FOREST CONSERVATION MANUAL:** “FOREST CONSERVATION MANUAL” MEANS THE
2 TECHNICAL MANUAL APPROVED BY THE COUNTY COUNCIL CONTAINING PERFORMANCE
3 STANDARDS AND GUIDELINES FOR IMPLEMENTATION OF THE HOWARD COUNTY FOREST
4 CONSERVATION PROGRAM.

5 (J) **FOREST CONSERVATION PLAN:** "FOREST CONSERVATION PLAN" MEANS A PLAN WHICH SHOWS
6 THE IMPACTS OF A PROPOSED DEVELOPMENT ON EXISTING FOREST RESOURCES. A "FOREST
7 CONSERVATION PLAN" INCLUDES EXISTING FOREST AREAS TO BE REMOVED OR RETAINED; THE
8 LOCATION, EXTENT AND SPECIFICATIONS FOR ANY REFORESTATION OR AFFORESTATION REQUIRED;
9 AND LEGAL MEASURES TO PROTECT FOREST RESOURCES AFTER COMPLETION OF DEVELOPMENT IN
10 ACCORDANCE WITH SECTION 16.1203 BELOW.

11 (K) **FOREST CONSERVATION PROGRAM:** “FOREST CONSERVATION PROGRAM” MEANS THE
12 ADMINISTRATION OF THE HOWARD COUNTY FOREST CONSERVATION ACT AND MANUAL BY
13 APPROPRIATE COUNTY AGENCIES AND THE MARYLAND DEPARTMENT OF NATURAL RESOURCES.

14 (L) **FOREST MITIGATION BANKING:** “FOREST MITIGATION BANKING” MEANS THE PLANTING OR
15 RETENTION OF TREES, ACCORDING TO PLANS APPROVED BY THE DEPARTMENT, TO BE USED AS
16 CREDIT FOR PLANTING OR RETENTION REQUIRED UNDER THIS SUBTITLE.

17 (M) **FOREST STAND DELINEATION:** “FOREST STAND DELINEATION” MEANS THE EVALUATION,
18 PURSUANT TO SECTION 16.1204 OF THIS SUBTITLE, OF EXISTING FORESTS AND OTHER VEGETATION
19 ON A SITE PROPOSED FOR DEVELOPMENT.

20 (N) **GREEN INFRASTRUCTURE NETWORK:** “GREEN INFRASTRUCTURE NETWORK” MEANS THE
21 SYSTEM OF HUBS AND CORRIDORS MAPPED IN THE HOWARD COUNTY GREEN INFRASTRUCTURE
22 NETWORK PLAN, PUBLISHED BY THE DEPARTMENT OF PLANNING AND ZONING IN DECEMBER 2012,
23 AS AMENDED.

24 (O) **HISTORIC SITE:** “HISTORIC SITE” MEANS A SITE OR STRUCTURE LISTED ON THE HISTORIC SITES
25 INVENTORY ADOPTED BY RESOLUTION OF THE COUNTY COUNCIL.

26 (P) **HISTORIC STRUCTURE:** “HISTORIC STRUCTURE” MEANS A STRUCTURE OR CLUSTER OF
27 STRUCTURES SITUATED WITHIN THE COUNTY WHICH, TOGETHER WITH ITS APPURTENANCES AND
28 ENVIRONMENTAL SETTING, HAVE SIGNIFICANT HISTORIC OR ARCHITECTURAL VALUE AND HAVE
29 BEEN DESIGNATED AS SUCH BY RESOLUTION OF THE COUNTY COUNCIL.

30 (Q) **IMPERVIOUS SURFACE:** “IMPERVIOUS SURFACE” MEANS ANY PERMANENT ARTIFICIAL
31 SURFACE, INCLUDING BUT NOT LIMITED TO AREAS COVERED BY ASPHALT, CONCRETE, PAVERS,
32 PERMEABLE PAVING, ROOFTOPS AND DECKS.

(R) **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.

(S) **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.

(T) **LOT:** “LOT” MEANS A PIECE OF LAND DESCRIBED IN A FINAL PLAT OR DEED AND RECORDED IN THE LAND RECORDS OF HOWARD COUNTY IN ACCORDANCE WITH THE LAWS AND REGULATIONS IN EFFECT AT THE TIME OF RECORDATION.

(U) **MANUAL:** “MANUAL” MEANS THE FOREST CONSERVATION MANUAL.

(V) **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.

(W) **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.

(X) **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.

(Y) **PRIORITY FUNDING AREA:** “PRIORITY FUNDING AREA” MEANS AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER TITLE 5, SUBTITLE 7B OF THE STATE FINANCE AND PROCUREMENT ARTICLE. IN HOWARD COUNTY THE PRIORITY FUNDING AREA IS ALL LAND WITHIN THE PLANNED SERVICE AREA FOR BOTH PUBLIC WATER AND SEWERAGE.

(Z) **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.

(AA) **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 TITLE.

(BB) **STREAM RESTORATION PROJECT:** “STREAM RESTORATION PROJECT” MEANS AN ACTIVITY THAT:

(1) IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT LOCATED WITHIN AN EXISTING STREAM, WATERWAY OR FLOODPLAIN;

(2) AVOIDS AND MINIMIZES IMPACTS TO FORESTS AND PROVIDES FOR REPLANTING ON-SITE AN EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;

(3) 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 HOWARD COUNTY TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND

(4) IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.

(CC) **SUBDIVISION REGULATIONS:** “SUBDIVISION REGULATIONS” MEANS TITLE 16, SUBTITLE 1 OF THE HOWARD COUNTY CODE, ENTITLED “SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.”

(DD) **URBAN CANOPY:** “URBAN CANOPY” MEANS TREE CANOPY INSIDE THE PLANNED SERVICE AREA FOR WATER AND SEWER THAT DOES NOT MEET THE DEFINITION OF FOREST BUT DOES PROVIDE AIR QUALITY, WATER QUALITY, AND HABITAT BENEFITS.

(EE) **WATERSHED:** “WATERSHED” MEANS THE MARYLAND 12-DIGIT WATERSHED DELINEATION AS DEFINED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT.

(FF) **OTHER TERMS:** OTHER TERMS WHICH ARE DEFINED IN TITLE 5, SUBTITLE 16 OF THE NATURAL RESOURCES ARTICLE OF THE 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.

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 WITH THE DEPARTMENT. PLAN APPROVAL IS REQUIRED PRIOR TO DEVELOPMENT AND PRIOR TO APPROVAL OF A:

- (1) SUBDIVISION PLAN;
- (2) SITE DEVELOPMENT PLAN;
- (3) GRADING PERMIT; OR
- (4) COUNTY ROAD AND UTILITY CONSTRUCTION PLANS.

(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) 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.

(ii) 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. IF NEW LAND AREA IS ADDED TO THE PLANNED UNIT DEVELOPMENT, THAT NEW LAND AREA IS SUBJECT TO THIS SUBTITLE;

(iii) 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/GREEN INFRASTRUCTURE NETWORK);

(iv) 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;

(v) AGRICULTURAL PRESERVATION SUBDIVISION, UNLESS IT INVOLVES THE CLEARING OF 20,000 SQUARE FEET OR GREATER OF FOREST;

(vi) RESUBDIVISIONS, THAT DO NOT CREATE ADDITIONAL LOTS, DEED ADJOINDERS, PROPERTY CONSOLIDATIONS, RECONFIGURATIONS AND CORRECTION PLATS AS PROVIDED FOR IN SECTIONS 16.102 AND 16.103 OF THIS TITLE;

(vii) MINOR SUBDIVISIONS THAT CREATE ONE ADDITIONAL LOT AND HAVE NO FURTHER SUBDIVISION POTENTIAL;

- (viii) MINING OR OTHER EXTRACTIVE ACTIVITY EXEMPTED BY STATE LAW FROM THE FOREST CONSERVATION REQUIREMENTS;
- (ix) ROUTINE MAINTENANCE OF EXISTING ROADS AND PUBLIC UTILITY RIGHTS-OF-WAY.
- (x) HIGHWAY CONSTRUCTION USING FULL OR PARTIAL STATE FUNDING IS EXEMPT FROM THIS SUBTITLE BUT SUBJECT TO STATE REFORESTATION REQUIREMENTS SET FORTH IN TITLE 5, SUBTITLE 1 OF THE NATURAL RESOURCES ARTICLE OF THE ANNOTATED CODE OF MARYLAND;
- (xi) THE CUTTING OR CLEARING OF PUBLIC UTILITY RIGHTS-OF-WAY , OR LAND FOR ELECTRIC GENERATING STATIONS LICENSED PURSUANT TO TITLE 7, SUBTITLE 2 OF THE PUBLIC UTILITY COMPANIES ARTICLE OF THE ANNOTATED CODE OF MARYLAND, IF:
- A. REQUIRED CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY HAVE BEEN ISSUED IN ACCORDANCE WITH THE 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.
- (xii) HOWARD COUNTY CAPITAL IMPROVEMENT PROJECTS, INCLUDING THOSE WITH PARTIAL STATE FUNDING, PROVIDED THAT:
- A. THE ACTIVITY IS CONDUCTED ON A SINGLE LOT OF ANY SIZE;
- B. THE ACTIVITY DOES NOT RESULT IN THE CUTTING, CLEARING OR GRADING OF MORE THAN 20,000 SQUARE FEET OF FOREST; AND
- C. THE IMPACTED FOREST IS NOT SUBJECT TO A PREVIOUSLY APPROVED FOREST CONSERVATION PLAN;
- (xiii) AN ACTIVITY ON A PREVIOUSLY DEVELOPED AREA COVERED BY AN IMPERVIOUS SURFACE AND LOCATED IN THE PRIORITY FUNDING AREA;
- (xiv) MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, SO LONG AS THE MAINTENANCE OR RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF THE EXISTING STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE; OR
- (xv) STREAM RESTORATION PROJECT, AS DEFINED IN THIS SUBTITLE, FOR WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS EXECUTED A BINDING MAINTENANCE AGREEMENT OF AT LEAST 5 YEARS WITH THE AFFECTED PROPERTY OWNER OR OWNERS.

(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:

(I) RESIDENTIAL DEVELOPMENT ON AN EXISTING SINGLE LOT OF ANY SIZE IF:

A. THE TOTAL CUTTING, CLEARING OR GRADING OF FOREST RESOURCES IS LESS THAN 20,000 SQUARE FEET; AND

B. THE FOREST RESOURCES AFFECTED BY THE DEVELOPMENT ARE NOT SUBJECT TO A PREVIOUSLY APPROVED FOREST CONSERVATION PLAN;

(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;

(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;

(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; AND

(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 PERFORM ONE OR ANY COMBINATION OF THE FOLLOWING:

(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 TITLE 5, SUBTITLE 16 OF THE NATURAL RESOURCES ARTICLE OF THE ANNOTATED CODE OF MARYLAND, AND THIS SUBTITLE; OR

(iv) FILE A DECLARATION OF INTENT WITH THE DEPARTMENT.

SECTION 16.1203. FOREST CONSERVATION MANUAL.

(A) **PURPOSE:** THE FOREST CONSERVATION MANUAL IS THE TECHNICAL MANUAL USED TO ESTABLISH STANDARDS OF PERFORMANCE REQUIRED IN PREPARING FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS.

(B) **PREPARATION AND ADOPTION:** THE MANUAL AND AMENDMENTS TO IT ARE PREPARED BY THE DEPARTMENT AND ADOPTED BY RESOLUTION OF THE COUNTY COUNCIL.

(C) **CONTENTS:** THE MANUAL INCLUDES SPECIFIC STANDARDS AND GUIDELINES FOR:

(1) SUBMISSION OF FOREST CONSERVATION PLANS, INCLUDING FOREST STAND DELINEATIONS;

(2) APPROVAL OF FOREST CONSERVATION PLANS;

(3) FOREST RETENTION PRIORITIES;

(4) REFORESTATION AND AFFORESTATION CALCULATIONS, PRIORITIES AND PREFERRED METHODS;

(5) FOREST CONSERVATION AGREEMENTS AND FINANCIAL SECURITY;

(6) DEED OF FOREST CONSERVATION EASEMENTS;

(7) PROCEDURAL VARIATIONS FOR MINOR SUBDIVISIONS, SINGLE LOT SITE DEVELOPMENT PLANS, RURAL CLUSTER SUBDIVISIONS, AND PHASED DEVELOPMENT;

(8) FOREST MITIGATION BANKING; AND

(9) OTHER INFORMATION NECESSARY TO IMPLEMENT THIS SUBTITLE.

1 **SECTION 16.1204. FOREST CONSERVATION PLAN.**

2 **(A) *APPLICABILITY:*** FOREST CONSERVATION PLANS, CONSISTENT WITH THIS SUBTITLE AND THE
3 MANUAL, SHALL BE SUBMITTED TO THE DEPARTMENT WITH APPLICATIONS FOR ALL DEVELOPMENT
4 NOT EXEMPT UNDER SECTION 16.1202 OF THIS SUBTITLE.

5 **(B) *PROFESSIONALLY PREPARED:*** THE FOREST CONSERVATION PLAN SHALL BE PREPARED BY A
6 LICENSED FORESTER, LANDSCAPE ARCHITECT OR OTHER QUALIFIED PROFESSIONAL AS SPECIFIED IN
7 COMAR 08.19.06.01.

8 **(C) *FOREST STAND DELINEATION:*** THE FOREST CONSERVATION PLAN SHALL INCLUDE A FOREST
9 STAND DELINEATION FOR THE PROPERTY TO BE SUBDIVIDED, DEVELOPED, OR GRADED. AN
10 APPROVED FOREST STAND DELINEATION IS VALID FOR 5 YEARS. THE FOREST STAND DELINEATION
11 SHALL:

12 (1) DESCRIBE THE EXTENT AND QUALITY OF EXISTING FORESTS AND OTHER VEGETATION AND
13 ITS RELATIONSHIP TO ENVIRONMENTALLY SENSITIVE AREAS ON-SITE AND TO FOREST
14 RESOURCES ON ADJACENT PROPERTIES.

15 (2) BE USED DURING THE REVIEW PROCESS TO DETERMINE THE MOST SUITABLE AND
16 PRACTICAL AREAS FOR FOREST CONSERVATION.

17 **(D) *FOREST CONSERVATION PLAN:*** A FOREST CONSERVATION PLAN SHALL:

18 (1) STATE THE NET TRACT AREA, AREA OF FOREST CONSERVATION REQUIRED, AND THE AREA
19 OF FOREST CONSERVATION PROPOSED ON-SITE AND/OR OFF-SITE;

20 (2) SHOW THE PROPOSED LIMITS OF DISTURBANCE;

21 (3) SHOW LOCATIONS FOR PROPOSED RETENTION OF EXISTING FOREST AND/OR PROPOSED
22 REFORESTATION OR AFFORESTATION;

23 (4) JUSTIFY THE FOLLOWING, IF EXISTING FOREST CANNOT BE RETAINED:

24 (i) HOW TECHNIQUES FOR FOREST RETENTION HAVE BEEN EXHAUSTED;

25 (ii) WHY THE PRIORITY FORESTS SPECIFIED IN SECTION 16.1205 OF THIS SUBTITLE CANNOT
26 BE LEFT IN AN UNDISTURBED CONDITION;

27 (iii) IF PRIORITY FORESTS AND PRIORITY AREAS CANNOT BE LEFT UNDISTURBED, WHERE ON
28 THE SITE IN PRIORITY AREAS REFORESTATION OR AFFORESTATION WILL OCCUR IN
29 COMPLIANCE WITH SECTION 16.1208 OF THIS SUBTITLE;

30 (iv) HOW SITE DESIGN REQUIREMENTS WILL BE FOLLOWED TO MAXIMIZE MEETING FOREST
31 CONSERVATION OBLIGATIONS ON-SITE IN COMPLIANCE WITH SECTION 16.1209 OF THIS
32 SUBTITLE;

(v) HOW THE SEQUENCE FOR PREFERRED REFORESTATION OR AFFORESTATION LOCATION AND METHODS WILL BE FOLLOWED IN COMPLIANCE WITH SECTION 16.1208 OF THIS SUBTITLE; AND

(vi) WHY REFORESTATION OR AFFORESTATION REQUIREMENTS CANNOT REASONABLY BE ACCOMPLISHED ON- OR OFF-SITE, OR THROUGH A FOREST MITIGATION BANK, IF THE APPLICANT PROPOSES PAYMENTS OF AN IN-LIEU FEE TO THE FOREST CONSERVATION FUND;

(5) SHOW PROPOSED LOCATIONS AND TYPES OF PROTECTIVE DEVICES AND MEASURES TO BE USED DURING CONSTRUCTION TO PROTECT TREES AND FORESTS DESIGNATED FOR CONSERVATION, INCLUDING PROTECTION OF CRITICAL ROOT ZONES;

(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 MINIMUM THREE GROWING SEASON FOREST CONSERVATION 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 FOREST CONSERVATION AGREEMENT AS PROVIDED IN SECTION 16.1210 AND THE MANUAL. MINOR SUBDIVISIONS WHICH MEET FOREST CONSERVATION REQUIREMENTS ENTIRELY BY FOREST RETENTION ARE NOT REQUIRED TO HAVE A FOREST CONSERVATION AGREEMENT;

(8) INCLUDE A DEED OF FOREST CONSERVATION EASEMENT WITH A PLAT OF THE FOREST CONSERVATION EASEMENT AREA, AS SPECIFIED IN THE MANUAL THAT:

(i) PROVIDES PROTECTION, IN PERPETUITY, 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.

SECTION 16.1205. FOREST RETENTION PRIORITIES.

(A) **ON-SITE FOREST RETENTION REQUIRED:** SUBDIVISION, SITE DEVELOPMENT, AND GRADING SHALL LEAVE THE FOLLOWING VEGETATION AND SPECIFIC AREAS IN AN UNDISTURBED CONDITION.

(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 MARYLAND DEPARTMENT OF NATURAL RESOURCES.

(2) TREES THAT ARE PART OF A HISTORIC SITE OR ASSOCIATED WITH A HISTORIC STRUCTURE.

(3) STATE CHAMPION TREES, TREES 75% OF THE DIAMETER OF STATE CHAMPION TREES, AND TREES 30" IN DIAMETER OR LARGER.

(B) **ON-SITE FOREST RETENTION PRIORITIES:** THE FOLLOWING VEGETATION AND SPECIFIC AREAS ARE CONSIDERED PRIORITY AND ARE LISTED IN ORDER OF PREFERENCE FOR ON-SITE RETENTION AND PROTECTION IN THE COUNTY. SUBDIVISION, SITE DEVELOPMENT, AND GRADING SHALL LEAVE THE FOLLOWING VEGETATION AND 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) HOWARD COUNTY GREEN INFRASTRUCTURE NETWORK.

(2) 100-YEAR FLOODPLAIN AS DEFINED IN THE SUBDIVISION REGULATIONS.

(3) STREAM BUFFERS AS DEFINED IN THE SUBDIVISION REGULATIONS;

(4) FORESTED WETLANDS AND WETLAND BUFFERS AS DEFINED IN THE SUBDIVISION REGULATIONS;

(5) CRITICAL HABITAT AREAS AND FOREST CORRIDORS WITH A MINIMUM WIDTH OF 300 FEET, WHERE PRACTICAL, FOR WILDLIFE MOVEMENT;

(6) STEEP SLOPES AS DEFINED IN THE SUBDIVISION REGULATIONS AND SLOPES OF 15% OR GREATER WITH A SOIL ERODIBILITY FACTOR GREATER THAN 0.35;

(7) FOREST CONTIGUOUS WITH THE PRIORITY AREAS LISTED ABOVE;

(8) FOREST CONTIGUOUS WITH OFF-SITE FOREST, IF THE OFF-SITE FOREST IS ALSO PROTECTED BY A FOREST CONSERVATION EASEMENT; AND

(9) PROPERTY LINE AND RIGHT-OF-WAY BUFFERS, PARTICULARLY ADJACENT TO SCENIC ROADS.

1 (C) **OFF-SITE RETENTION:**

2 (1) THE COUNTY OR A DEVELOPER MAY PROVIDE FOR OFF-SITE FOREST RETENTION AT A RATIO
3 OF 2 ACRES OF FOREST RETENTION FOR EVERY 1 ACRE OF FOREST CONSERVATION
4 OBLIGATION. THE OFF-SITE FOREST MUST NOT BE CURRENTLY PROTECTED IN PERPETUITY
5 BY EASEMENT OR OTHER LONG-TERM PROTECTION MEASURES.

6 (2) THE VEGETATION AND SPECIFIC AREA PRIORITIES FOR LOCATING OFF-SITE FOREST
7 RETENTION UNDER THIS SUBSECTION ARE THE SAME AS PROVIDED UNDER SUBSECTION (B)
8 OF THIS SECTION.

9
10 **SECTION 16.1206. REFORESTATION.**

11 (A) **REQUIREMENT TO REFOREST AREAS WHICH HAVE BEEN CUT OR CLEARED:** THE FOREST
12 CONSERVATION PLAN SHALL PROVIDE FOR:

13 (1) ON- OR OFF-SITE REFORESTATION TO REPLACE FOREST WHICH IS PROPOSED TO BE CUT OR
14 CLEARED ON THE NET TRACT AREA AFTER REASONABLE EFFORTS TO MINIMIZE SUCH
15 CUTTING OR CLEARING; OR

16 (2) PAYMENT-IN-LIEU OF REFORESTATION IF REFORESTATION CANNOT REASONABLY BE
17 ACCOMPLISHED.

18 (B) **MINIMUM SIZE:** AREAS TO BE REFORESTED SHALL BE AT LEAST 10,000 SQUARE FEET WITH A
19 MINIMUM WIDTH OF 50 FEET, UNLESS OTHERWISE APPROVED BY THE DEPARTMENT BASED ON
20 CRITERIA IN THE FOREST CONSERVATION MANUAL.

21 (C) **CALCULATING THE AMOUNT OF REFORESTATION REQUIRED:** THE AMOUNT OF
22 REFORESTATION REQUIRED DEPENDS UPON THE AMOUNT OF FOREST COVER EXISTING AND
23 REMOVED FROM THE NET TRACT AREA AND THE LAND USE BEING DEVELOPED. THE REFORESTATION
24 REQUIREMENT SHALL BE CALCULATED AS FOLLOWS:

25 (1) **REFORESTATION THRESHOLD:** THERE IS A REFORESTATION THRESHOLD FOR ALL LAND USE
26 CATEGORIES. THE REFORESTATION THRESHOLD ESTABLISHES THE PERCENTAGE OF THE NET
27 TRACT AREA AT WHICH THE REFORESTATION REQUIREMENT CHANGES. REFORESTATION
28 REQUIREMENTS FOR CLEARING FOREST BELOW THE THRESHOLD ARE GREATER THAN FOR
29 CLEARING ABOVE THE THRESHOLD. THRESHOLDS FOR CALCULATING REFORESTATION
30 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%
INSTITUTIONAL OR LINEAR	20%
RETAIL, INDUSTRIAL OR OFFICE	15%
MIXED USE DEVELOPMENT OR PLANNED UNIT DEVELOPMENT	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) FOR REFORESTATION SITES WITHIN THE SAME WATERSHED, 1/2 ACRE SHALL BE REFORESTED, FOR EACH ACRE OR PORTION OF AN ACRE CLEARED ABOVE THE THRESHOLD (1/2:1 RATIO). FOR REFORESTATION SITES OUTSIDE THE SAME WATERSHED, 1 ACRE SHALL BE REFORESTED, FOR EACH ACRE OR PORTION OF AN ACRE CLEARED ABOVE THE THRESHOLD (1:1 RATIO).
- (II) FOR REFORESTATION SITES WITHIN THE SAME WATERSHED, 2 ACRES SHALL BE REFORESTED FOR EACH ACRE OR PORTION OF AN ACRE CLEARED BELOW THE THRESHOLD (2:1 RATIO). FOR REFORESTATION SITES OUTSIDE THE SAME WATERSHED, 3 ACRES SHALL BE REFORESTED FOR EACH ACRE OR PORTION OF AN ACRE CLEARED BELOW THE THRESHOLD (3:1 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 WITH A MINIMUM WIDTH OF 50 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%
INSTITUTIONAL OR LINEAR	15%
RETAIL, INDUSTRIAL OR OFFICE	15%
MIXED USE DEVELOPMENT OR PLANNED UNIT DEVELOPMENT	15%

(2) FOREST CUT OR CLEARED BELOW THE REQUIRED AFFORESTATION LEVEL SHALL BE AFFORESTED AT 2:1 RATIO FOR AFFORESTATION SITES WITHIN THE SAME WATERSHED AND AT 3:1 RATIO FOR AFFORESTATION SITES OUTSIDE THE SAME WATERSHED. THIS AFFORESTATION SHALL BE 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.

SECTION 16.1208. REFORESTATION AND AFFORESTATION LOCATION PRIORITIES, PREFERRED LOCATION, AND PREFERRED METHODS.

(A) LOCATION PRIORITIES: THE FOLLOWING ARE PRIORITY LOCATIONS FOR REFORESTATION AND AFFORESTATION, AND ARE LISTED IN ORDER OF PREFERENCE. 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 OFF-SITE PLANTING WOULD HAVE GREATER ENVIRONMENTAL BENEFIT, THE DEPARTMENT MAY APPROVE OFF-SITE REFORESTATION OR AFFORESTATION IN HIGH-PRIORITY LOCATIONS WITHIN HOWARD COUNTY, PREFERABLY WITHIN THE SAME SUBBASIN OR WATERSHED:

- (1) ESTABLISH OR ENHANCE FOREST IN THE HOWARD COUNTY GREEN INFRASTRUCTURE NETWORK.
- (2) ESTABLISH OR ENHANCE FOREST IN 100-YEAR FLOODPLAINS AND BUFFERS TO INTERMITTENT AND PERENNIAL STREAMS AS DEFINED IN THE SUBDIVISION REGULATIONS;
- (3) ESTABLISH OR ENHANCE FOREST IN WETLANDS AND WETLAND BUFFERS AS DEFINED IN THE SUBDIVISION REGULATIONS;
- (4) ESTABLISH OR ENHANCE CRITICAL HABITAT BUFFERS AND FOREST CORRIDORS FOR WILDLIFE MOVEMENT, THE CORRIDORS, WHERE PRACTICAL, BEING A MINIMUM OF 300 FEET IN WIDTH;
- (5) ESTABLISH PLANTINGS TO STABILIZE SLOPES OF 25% OR GREATER AND SLOPES OF 15% OR GREATER WITH A SOIL K VALUE GREATER THAN 0.35;
- (6) ESTABLISH FOREST AREAS ADJACENT TO EXISTING FORESTS TO INCREASE THE OVERALL AREA OF CONTIGUOUS FOREST COVER;
- (7) ESTABLISH FOREST AREAS BETWEEN SMALL FOREST AND TREE STANDS TO BUILD A FOREST COMMUNITY; AND
- (8) 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.

(B) PREFERRED LOCATION: THE FOLLOWING IS THE PREFERRED SEQUENCE FOR LOCATION OF REFORESTATION AND AFFORESTATION. THE DEPARTMENT 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 (1) ON SITE.

2 (2) MITIGATION BANK.

3 (3) OFF SITE.

4 (C) **PREFERRED METHODS:** THE FOLLOWING SEQUENCE OF REFORESTATION AND AFFORESTATION
5 METHODS IS PREFERRED. THE DEPARTMENT MAY APPROVE LESS PREFERRED METHODS WHEN SUCH
6 METHODS WILL BETTER ACHIEVE FOREST SURVIVAL.

7 (1) PLANTING WITH NURSERY STOCK.

8 (2) TRANSPLANTING LOCAL PLANT MATERIAL.

9 (3) NATURAL REGENERATION.

10 (4) SELECTIVE CLEARING AND SUPPLEMENTAL PLANTING.

11
12 **16.1209. SITE DESIGN REQUIREMENTS.**

13 (A) SITE DESIGN SHOULD ADDRESS THE FOREST CONSERVATION PROGRAM GOALS OF MAXIMIZING
14 FOREST RETENTION AND MEETING FOREST CONSERVATION OBLIGATIONS ON-SITE.

15 (B) BEFORE MITIGATION BANKS, OFF-SITE COMPLIANCE, OR FEE-IN-LIEU REQUESTS WILL BE
16 CONSIDERED, FOREST CONSERVATION OBLIGATIONS SHALL BE MET ON-SITE, IN ACCORDANCE WITH
17 THE FOLLOWING SITE DESIGN REQUIREMENTS:

18 (1) NONRESIDENTIAL DEVELOPMENTS SHALL ACCOMMODATE FOREST CONSERVATION
19 OBLIGATIONS ON-SITE BY ESTABLISHING FOREST CONSERVATION EASEMENTS WITH
20 RETAINED OR PLANTED FOREST IN ALL SENSITIVE AREAS, INCLUDING FLOODPLAINS,
21 WETLANDS, WETLAND BUFFERS, STEEP SLOPES AND STREAM BUFFERS. TO ENSURE
22 PROTECTION OF RIPARIAN AREAS, THE FOREST CONSERVATION EASEMENTS SHALL BE A
23 MINIMUM 75-FOOT WIDTH FROM THE BANKS OF ANY PERENNIAL AND INTERMITTENT
24 STREAM. THE AREA BETWEEN THE REQUIRED STREAM BUFFER AND THE FOREST
25 CONSERVATION EASEMENT MAY BE DISTURBED DURING CONSTRUCTION.

26 (2) RESIDENTIAL DEVELOPMENTS WITH MORE THAN ONE ACRE OF OBLIGATION SHALL MEET A
27 MINIMUM OF 75% OF THEIR OBLIGATION ON-SITE BY REDUCING LOT SIZES, CLUSTERING
28 LOTS AND MAXIMIZING OPEN SPACE TO THE MAXIMUM EXTENT PERMITTED BY THE
29 SUBDIVISION AND LAND DEVELOPMENT REGULATIONS. INFILL SUBDIVISIONS OF TEN LOTS
30 OR LESS ARE EXEMPT FROM THIS REQUIREMENT.

31 (3) RESIDENTIAL DEVELOPMENTS IN THE RC OR RR ZONING DISTRICTS SHALL ACCOMMODATE
32 ALL FOREST CONSERVATION OBLIGATIONS WITHIN THE BOUNDARIES OF A RECEIVING
33 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 REAR AND SIDE LOT LINES 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 16.1210. FINANCIAL SECURITY FOR REFORESTATION AND AFFORESTATION.

(A) **FINANCIAL SECURITY REQUIRED:** A PERSON REQUIRED TO PROVIDE 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 SECURITY SHALL:

(1) ASSURE THAT THE AFFORESTATION, REFORESTATION, AND THE ASSOCIATED FOREST CONSERVATION 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) **RELEASE OF FINANCIAL SECURITY:** IF, AFTER 3 GROWING SEASONS FOLLOWING THE AFFORESTATION OR REFORESTATION OR AS PROVIDED IN THE FOREST CONSERVATION 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.

(C) **DEFAULT AND LIEN:** IF, AFTER 3 GROWING SEASONS OR AS PROVIDED IN THE FOREST CONSERVATION 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

1 AGAINST THE DEVELOPER AND, UNLESS THEY ARE PAID OR APPEALED TO THE BOARD OF APPEALS
2 WITHIN 30 DAYS AFTER BILLING BY THE COUNTY, SHALL BECOME A FINAL LIEN AGAINST THE
3 PROPERTY BEING DEVELOPED AND SHALL IN EVERY RESPECT BE TREATED AS COUNTY REAL ESTATE
4 TAXES.

5
6 **SECTION 16.1211. FEE-IN-LIEU OF AFFORESTATION OR REFORESTATION.**

7 **(A) *FEE-IN-LIEU AUTHORIZED:***

8 (1) THE DEPARTMENT MAY APPROVE THE PAYMENT OF A FEE-IN-LIEU OF AFFORESTATION OR
9 REFORESTATION:

10 (i) WHEN AFFORESTATION OR REFORESTATION REQUIREMENTS CANNOT BE REASONABLY
11 ACCOMPLISHED ON-SITE OR OFF-SITE BASED ON CRITERIA IN THE MANUAL, AND
12 APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK ARE NOT
13 AVAILABLE; OR

14 (ii) WHEN A LANDOWNER REQUESTS A MODIFICATION OF A RECORDED FOREST
15 CONSERVATION EASEMENT AND NOTICE OF THE MODIFICATION HAS BEEN PROVIDED IN
16 ACCORDANCE WITH THE SECTION 10-312 OF THE LOCAL GOVERNMENT ARTICLE OF
17 THE ANNOTATED CODE OF MARYLAND.

18 (2) THE FEE-IN-LIEU SHALL BE CALCULATED ON A SQUARE-FOOT BASIS AT A RATE
19 ESTABLISHED IN THE FEE SCHEDULE ADOPTED BY RESOLUTION OF THE COUNTY COUNCIL,
20 BUT IN NO EVENT SHALL IT BE LESS THAN THE MINIMUM SET BY STATE LAW. THE FEE-IN-
21 LIEU SHALL BE 20% HIGHER OUTSIDE THE PRIORITY FUNDING AREA.

22 (3) A DEVELOPER OF A RESIDENTIAL SUBDIVISION MAY REQUEST A FEE-IN-LIEU FOR NO MORE
23 THAN ONE ACRE OF FOREST CONSERVATION OBLIGATION.

24 **(B) *TIMING - PAYMENT OF FEE-IN-LIEU: FEE-IN-LIEU PAYMENTS SHALL BE PAID TO THE***
25 ***COUNTY:***

26 (1) FOR A PROJECT NOT SUBJECT TO A RECORDED FOREST CONSERVATION EASEMENT, PRIOR TO
27 PLAT RECORDATION OF A SUBDIVISION, PRIOR TO APPROVAL OF A SITE DEVELOPMENT PLAN
28 OR, IF NONE, PRIOR TO ISSUANCE OF A GRADING PERMIT; OR

29 (2) WHEN A LANDOWNER REQUESTS A MODIFICATION OF A RECORDED FOREST CONSERVATION
30 EASEMENT, PRIOR TO THE RECORDATION OF THE REVISED SUBDIVISION PLAT OR PLAT OF
31 FOREST CONSERVATION EASEMENT AND PRIOR TO NOTICE OF THE MODIFICATION PROVIDED
32 IN ACCORDANCE WITH SECTION 10-312 OF THE LOCAL GOVERNMENT ARTICLE OF THE
33 ANNOTATED CODE OF MARYLAND.

1
2 **SECTION 16.1212. FOREST CONSERVATION FUND.**

3 (A) *FUND ESTABLISHED:* THE DIRECTOR OF FINANCE SHALL ESTABLISH AN ACCOUNT TO BE KNOWN
4 AS THE FOREST CONSERVATION FUND. NO MONIES DEPOSITED IN THIS ACCOUNT MAY REVERT TO
5 THE GENERAL FUND.

6 (B) *SOURCE OF MONEYS IN FOREST CONSERVATION FUND:* FEES PAID IN-LIEU OF REFORESTATION
7 OR AFFORESTATION UNDER SECTION 16.1211 OF THIS SUBTITLE AND NONCOMPLIANCE FEES PAID
8 PURSUANT TO SUBSECTION (C) OF THIS SECTION SHALL BE DEPOSITED IN THE FOREST
9 CONSERVATION FUND. INTEREST EARNED BY MONEY IN THE FOREST CONSERVATION FUND SHALL
10 REMAIN IN THE FUND.

11 (C) *NONCOMPLIANCE PENALTIES:* THE NONCOMPLIANCE PENALTY IS A FINE PER SQUARE FOOT OF
12 FOREST CUT, CLEARED OR GRADED WHICH MAY BE ASSESSED AGAINST VIOLATORS OF THIS
13 SUBTITLE AS SPECIFIED IN SECTION 16.1213 OF THIS SUBTITLE. THE AMOUNT OF THE
14 NONCOMPLIANCE PENALTY IS SET BY RESOLUTION OF THE COUNTY COUNCIL, AND IN NO EVENT
15 SHALL IT BE LESS THAN THE MINIMUM SET BY STATE LAW.

16 (D) *USE OF FOREST CONSERVATION FUND:*

17 (1) THE MINIMUM IN-LIEU-OF FEES ESTABLISHED BY THE STATE MAY BE EXPENDED BY THE
18 COUNTY:

19 (I) FOR AFFORESTATION OR REFORESTATION WITHIN HOWARD COUNTY, INCLUDING SITE
20 IDENTIFICATION, ACQUISITION, AND PREPARATION;

21 (II) FOR ACQUISITION OF FOREST RETENTION EASEMENTS;

22 (III) FOR MAINTENANCE OF EXISTING FORESTS; AND

23 (IV) FOR CREATING URBAN CANOPY.

24 (2) IN-LIEU-OF FEES ABOVE THE STATE MINIMUMS AND NONCOMPLIANCE PENALTIES MAY BE
25 USED BY THE COUNTY FOR ANY PURPOSES RELATED TO IMPLEMENTATION OF THE FOREST
26 CONSERVATION PROGRAM.

27
28 **SECTION 16.1213. ENFORCEMENT; PENALTIES.**

29 THE PROVISIONS OF THIS SUBTITLE MAY BE ENFORCED WITH ANY OR ALL OF THE FOLLOWING
30 MEASURES:

31 (A) *REVOCATION OF EXEMPTION:* THE DEPARTMENT MAY REVOKE AN EXEMPTION FOR PROPERTIES
32 THAT ARE IN VIOLATION OF THE CONDITIONS OF EXEMPTION SET FORTH IN SECTION 16.1202(B) OF
33 THIS SUBTITLE AND MAY REQUIRE COMPLIANCE WITH THE RETENTION, REFORESTATION AND

1 AFFORESTATION REQUIREMENTS OF THIS SUBTITLE. PRIOR TO REVOCATION, THE DEPARTMENT
2 SHALL NOTIFY THE VIOLATOR IN WRITING AND PROVIDE AN OPPORTUNITY FOR A RESPONSE.

3 (B) *REVOCATION OF APPROVED FOREST CONSERVATION PLAN:* THE DEPARTMENT MAY REVOKE AN
4 APPROVED FOREST CONSERVATION PLAN FOR CAUSE, INCLUDING ANY OF THE FOLLOWING
5 CONDITIONS:

6 (1) NONCOMPLIANCE WITH THIS SUBTITLE OR WITH CONDITIONS OF AN APPROVED FOREST
7 CONSERVATION PLAN; OR

8 (2) OBTAINING APPROVAL OF THE PLAN THROUGH FRAUD, MISREPRESENTATION, A FALSE OR
9 MISLEADING STATEMENT, OR OMISSION OF A RELEVANT OR MATERIAL FACT.

10
11 PRIOR TO REVOCATION, THE DEPARTMENT SHALL NOTIFY THE VIOLATOR IN WRITING AND
12 PROVIDE AN OPPORTUNITY FOR A RESPONSE.

13 (C) *STOP-WORK ORDER:* THE COUNTY MAY ISSUE A STOP-WORK ORDER AGAINST ANY VIOLATOR
14 OF THIS SUBTITLE, THE MANUAL, AN ORDER, AN APPROVED FOREST CONSERVATION PLAN, THE
15 ASSOCIATED FOREST CONSERVATION AGREEMENT AND LONG-TERM DEED OF FOREST
16 CONSERVATION EASEMENT, OR A DECLARATION OF INTENT.

17 (D) *INJUNCTION:* THE COUNTY MAY SEEK AN INJUNCTION REQUIRING A VIOLATOR TO CEASE THE
18 VIOLATION AND TAKE CORRECTIVE ACTION TO RESTORE OR REFOREST AN AREA.

19 (E) *NONCOMPLIANCE PENALTIES:* THE COUNTY MAY ASSESS A NONCOMPLIANCE PENALTY AS
20 DEFINED IN SECTION 16.1212 OF THIS SUBTITLE, AGAINST A VIOLATOR OF THIS SUBTITLE, THE
21 MANUAL, AN ORDER, AN APPROVED FOREST CONSERVATION PLAN, AN ASSOCIATED FOREST
22 CONSERVATION AGREEMENT, A LONG-TERM DEED OF FOREST CONSERVATION EASEMENT OR A
23 DECLARATION OF INTENT.

24 (F) *CIVIL PENALTIES:* IN ADDITION TO AND CONCURRENT WITH ALL OTHER REMEDIES, THE
25 DEPARTMENT OF PLANNING AND ZONING MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE OR AN
26 APPROVED FOREST CONSERVATION PLAN WITH CIVIL PENALTIES PURSUANT TO THE PROVISIONS OF
27 TITLE 24, "CIVIL PENALTIES," OF THE HOWARD COUNTY CODE. A VIOLATION SHALL BE A CLASS A
28 OFFENSE. EACH DAY A VIOLATION CONTINUES IS A SEPARATE VIOLATION.

29
30 **SECTION 16.1214. MITIGATION BY COUNTY.**

31 IN THE EVENT THAT ANY PERSON DEVELOPS LAND IN VIOLATION OF THIS SUBTITLE WITHOUT AN
32 APPROVED FOREST CONSERVATION PLAN AND ANY OTHER REQUIRED DEVELOPMENT APPROVALS
33 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 16.1213 OF THIS SUBTITLE.

SECTION 16.1215. APPEALS.

ANY PERSON SPECIALLY AGGRIEVED 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 16.1216. VARIANCES.

(A) THE DEPARTMENT MAY GRANT WAIVERS TO THE REQUIREMENTS OF THIS SUBTITLE IN
ACCORDANCE WITH THE PROCEDURES OF SUBSECTION 16.104(B) AND SUBSECTION 16.104(C) OF
THE SUBDIVISION REGULATIONS.

(B) FOR PURPOSES OF THIS SECTION "UNWARRANTED HARDSHIP" SHALL MEAN THAT, WITHOUT A
VARIANCE, AN APPLICANT SHALL BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE
PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.

(C) A VARIANCE TO THE PROVISIONS OF THIS SUBTITLE SHALL BE CONSIDERED AND APPROVED OR
DENIED IN WRITING BY:

(1) THE PLANNING BOARD, FOR PLANS THAT REQUIRE PLANNING BOARD APPROVAL

(2) FOR PLANS THAT DO NOT REQUIRE PLANNING BOARD APPROVAL, THE DIRECTORS OF THE
DEPARTMENT OF PLANNING AND ZONING, THE ADMINISTRATOR OF THE OFFICE OF
COMMUNITY SUSTAINABILITY, AND THE DIRECTOR OF THE DEPARTMENT OF RECREATION
AND PARKS.

1 (D) CONSIDERATION OF A VARIANCE REQUESTED UNDER THIS SECTION SHALL INCLUDE A
2 DETERMINATION AS TO WHETHER AN APPLICANT HAS DEMONSTRATED TO THE SATISFACTION OF
3 EACH DEPARTMENT OR THE PLANNING BOARD THAT ENFORCEMENT OF THIS SUBTITLE WOULD
4 RESULT IN UNWARRANTED HARDSHIP. INCREASED COST OR INCONVENIENCE OF MEETING THE
5 REQUIREMENTS OF THE THESE REGULATIONS DOES NOT CONSTITUTE AN UNWARRANTED HARDSHIP
6 TO THE APPLICANT. THE APPLICANT SHALL:

7 (1) DESCRIBE THE SPECIAL CONDITIONS PECULIAR TO THE PROPERTY WHICH WOULD CAUSE
8 THE UNWARRANTED HARDSHIP;

9 (2) DESCRIBE HOW ENFORCEMENT OF THESE REGULATIONS WOULD DEPRIVE THE LANDOWNER
10 OF RIGHTS COMMONLY ENJOYED BY OTHERS IN SIMILAR AREAS;

11 (3) VERIFY THAT THE GRANTING OF A VARIANCE WILL NOT ADVERSELY AFFECT WATER
12 QUALITY;

13 (4) VERIFY THAT THE GRANTING OF A VARIANCE WILL NOT CONFER ON THE APPLICANT A
14 SPECIAL PRIVILEGE THAT WOULD BE DENIED TO OTHER APPLICANTS;

15 (5) VERIFY THAT THE VARIANCE REQUEST IS NOT BASED ON CONDITIONS OR CIRCUMSTANCES
16 WHICH ARE THE RESULT OF ACTIONS BY THE APPLICANT;

17 (6) VERIFY THAT THE CONDITION DID NOT ARISE FROM A CONDITION RELATING TO LAND OR
18 BUILDING USE, EITHER PERMITTED OR NONCONFORMING, ON A NEIGHBORING PROPERTY;
19 AND

20 (7) PROVIDE ANY OTHER INFORMATION APPROPRIATE TO SUPPORT THE REQUEST.

21 (E) ANY NATIVE SPECIMEN TREE REMOVED SHALL BE REPLACED ON-SITE BY AT LEAST TWO NATIVE
22 TREES WITH A DBH OF AT LEAST THREE INCHES.

23 (F) NOTICE OF A REQUEST FOR A COMPLETE VARIANCE OF THE FOREST CONSERVATION PROGRAM
24 SHALL BE GIVEN BY THE DEPARTMENT OF PLANNING AND ZONING TO THE MARYLAND
25 DEPARTMENT OF NATURAL RESOURCES WITHIN 15 DAYS OF RECEIPT OF A REQUEST FOR A
26 VARIANCE. NOTICE OF A REQUEST FOR A VARIANCE TO INDIVIDUAL PROGRAM REQUIREMENTS,
27 TEMPORARY DEFERRAL, PHASING OF OBLIGATIONS, OR SEEKING ALTERNATIVE COMPLIANCE WITH
28 THE FOREST CONSERVATION PROGRAM REQUIREMENTS SHALL BE GIVEN BY THE DEPARTMENT OF
29 PLANNING AND ZONING TO THE MARYLAND DEPARTMENT OF NATURAL RESOURCES AFTER A
30 DECISION ON THE VARIANCE REQUEST IS RENDERED BY THE DEPARTMENT.

1 **SECTION 16.1217. ABANDONMENT OF A FOREST CONSERVATION EASEMENT.**

2 (A) **AUTHORIZED.** WHERE AN ERROR OR ENCROACHMENT IS DISCOVERED AFTER THE
3 ESTABLISHMENT OF A FOREST CONSERVATION EASEMENT AND THE AREA WITHIN THE
4 ENCROACHMENT OR ERROR NO LONGER COMPLIES WITH THE FOREST CONSERVATION ACT, THE
5 DEPARTMENT OF PLANNING AND ZONING MAY ALLOW FOR THE ABANDONMENT OF NO MORE THAN
6 0.5 ACRES IF EQUIVALENT REPLACEMENT IS PROVIDED EITHER:

- 7 1. OFF SITE ADJACENT TO AN EXISTING FOREST CONSERVATION EASEMENT;
8 2. WITHIN A FOREST CONSERVATION BANK; OR
9 3. THROUGH PAYMENT OF A FEE IN-LIEU.

10 (B) **NOTIFICATION.** NOTIFICATION WILL BE PROVIDED ACCORDING TO SECTION 10-312 OF THE
11 LOCAL GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND.

12
13 **SECTION 16.1218. FOREST MITIGATION BANKING.**

14 (A) **OPPORTUNITY TO CREATE A FOREST MITIGATION BANK:** THE HOWARD COUNTY
15 DEPARTMENT OF RECREATION AND PARKS OR A PRIVATE PROPERTY OWNER WITH THE
16 DEPARTMENT’S APPROVAL, MAY ESTABLISH A FOREST MITIGATION BANK. MITIGATION BANK
17 EASEMENT RIGHTS MAY BE PURCHASED BY A DEVELOPER WHEN THE DEPARTMENT DETERMINES
18 THAT ALL OR A PORTION OF A PROJECT'S RETENTION, REFORESTATION OR AFFORESTATION
19 OBLIGATIONS CAN BE MET OFF-SITE AND THAT THE MITIGATION BANK HAS MET ALL
20 REQUIREMENTS.

21 (B) **MINIMUM SIZE:** MITIGATION BANKS SHALL BE AT LEAST ONE ACRE IN AREA UNLESS
22 OTHERWISE APPROVED BY THE DEPARTMENT.

23 (C) **LOCATION PRIORITIES:** FOREST RETENTION MITIGATION BANKS SHALL BE LOCATED IN
24 ACCORDANCE WITH THE HIGHEST EIGHT RETENTION PRIORITIES SPECIFIED IN SECTION 16.1205 OF
25 THIS SUBTITLE. PLANTED FOREST MITIGATION BANKS SHALL BE LOCATED IN ACCORDANCE WITH
26 THE HIGHEST SIX REFORESTATION AND AFFORESTATION PRIORITIES SPECIFIED IN SECTION 16.1208
27 OF THIS SUBTITLE.

28 (D) **PREFERRED METHODS:** PLANTED FOREST MITIGATION BANKS SHALL BE PLANTED USING
29 NURSERY STOCK, WHIPS, OR SEEDLINGS, BUT NOT NATURAL REGENERATION.

30 (E) **APPROVAL PROCEDURE:** PRIVATE FOREST MITIGATION BANK APPLICANTS SHALL SUBMIT FOR
31 THE DEPARTMENT'S APPROVAL THE PROPOSED LOCATION AND A FOREST CONSERVATION PLAN.
32 UPON COMPLETION OF THE INSTALLATION OF ALL PROTECTION DEVICES AND ALL FOREST
33 PLANTING, AS REQUIRED, THE COUNTY SHALL CERTIFY COMPLIANCE WITH THE APPROVED FOREST

1 CONSERVATION PLAN. AT THE END OF THE MINIMUM THREE GROWING SEASONS, OR LONGER IF
2 REQUIRED, THE COUNTY SHALL CERTIFY THAT THE SURVIVAL RATES SPECIFIED IN THE MANUAL
3 HAVE BEEN ACHIEVED.

4 (F) **FOREST CONSERVATION AGREEMENT AND FINANCIAL SECURITY:** PLANTED FOREST
5 MITIGATION BANKS SHALL EXECUTE A FOREST CONSERVATION AGREEMENT AND POST A
6 FINANCIAL SECURITY

7 (G) **DEED OF FOREST CONSERVATION EASEMENT:** THE APPLICANT SHALL RECORD A FOREST
8 CONSERVATION EASEMENT PLAT AND A DEED OF FOREST CONSERVATION EASEMENT IN
9 ACCORDANCE WITH PROCEDURES OUTLINED IN THE MANUAL.

10
11 **SECTION 16.1219. SEVERABILITY.**

12 IF ANY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE OR PORTION OF THIS SUBTITLE IS HELD
13 INVALID BY ANY COURT OF COMPETENT JURISDICTION, THAT PORTION SHALL BE DEEMED A
14 SEPARATE, DISTINCT AND INDEPENDENT PROVISION; AND THE INVALIDITY SHALL NOT AFFECT THE
15 VALIDITY OF THE REMAINING PORTIONS OF THE SUBTITLE AND FOR THIS PURPOSE, THE PROVISIONS
16 OF THIS ACT ARE DECLARED SEVERABLE.

17
18 **Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland**
19 *that, for sketch plans or preliminary equivalent sketch plans that are technically complete on or*
20 *before December 2, 2019, plans or permits listed in Section 16.1202(a)(1) - (4) shall continue to*
21 *be processed and reviewed under the Forest Conservation Act of Howard County existing prior*
22 *to amendments approved and enacted by this Act. If there are any inconsistency between the Act*
23 *and the Manual, the provisions of the Act will apply. If the plan fails to be finally approved, then*
24 *the plan shall be resubmitted under the provisions of this Act.*

25
26 **Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland that**
27 *this Act shall become effective 61 days after its enactment.*