

## CHAPTER 150: FOREST CONSERVATION

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## FOREST CONSERVATION

### § 150.01 DEFINITIONS.

In this chapter the following terms have the meanings indicated. Any term not defined in this chapter shall have the meaning as defined in any chapter of the Code. Any term not defined in the Code in any chapter shall have its generally accepted meaning.

**AFFORESTATION.** Establishment of a forest on an area from which forest cover has been absent for a long period of time; or planting of open areas which are not presently in forest cover.

**AGRICULTURAL ACTIVITY.** Farming activities, including plowing, tillage, cropping, ~~construction of agricultural structures,~~ installation of agricultural best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, ~~Christmas tree plantations,~~ nurseries, and other products cultivated as part of a recognized commercial enterprise.

**AGRICULTURAL STRUCTURE.** ~~A structure used for the storage and/or processing of products produced on the farm where the structure is located, and livestock propagation. The agricultural structure is not to be used for human occupancy or be open to the general public for commercial, recreational, or other uses.~~

Commented [JB1]: Changing to match state code

**APPLICANT.** An individual, partnership, firm, corporation, or other entity that undertakes or participates in the activities covered by this chapter.

**BASAL AREA.** The total cross-sectional area of trees per unit acre.

**BEST MANAGEMENT PRACTICE (BMP).** Conservation practices or systems of practices and management measures that:

(1) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

(2) Minimize adverse impacts to the surface water, groundwater flow and circulation patterns, and to their chemical, physical, and biological characteristics.

**BUFFER.** A regulated area left undisturbed adjacent to a specific natural feature or resource.

**BUILDABLE LOT.** Separately described parcel legally created in accordance with Chapter 158 or its predecessor law which allows or would have allowed, without a variance, the construction of a single-family dwelling or if in the C-1, C-2, C-3, I-1, or I-2 Districts, allows or would have allowed, without a variance, the construction of a building to house any principal permitted use. The term does not imply that such lot has met or will meet Carroll County Health Department standards and requirements for water and sewer or other applicable government approvals which shall be obtained prior to the granting of a building permit.

**CALIPER.** The diameter of a tree measured at 2 inches above the root collar.

**CHAMPION TREE.** The largest tree of its species within the United States, the state, County, or municipality, as determined pursuant to the listing set forth in the Technical Manual.

**CLEAR.** The removal of any woody plant, wherein the stump and root mass are physically removed.

**CLEARCUT.** Logging or timber harvesting, for any purpose, that results in the affected wood lot being reduced to a state that no longer meets the definition of a forest as set forth in this chapter.

**COMMERCIAL.** Those zoning districts described in Chapter 158, Zoning, as Commercial and their corresponding zoning districts lying within the incorporated municipalities.

**COUNTY.** The Board of Commissioners of Carroll County or its designee; the Department of Land and Resource Management, or its successor agency.

**COUNTY ROAD.** A roadway financed or maintained by the County.

**CUT.** The removal of any woody plant, wherein the stump and root mass remain in place and intact.

**DEVELOPER.** A person who engages in development or who owns property upon which a development is proposed or accomplished.

**DEVELOPMENT.** The subdivision of land and those divisions referred to as off conveyances, and/or any change to improved or unimproved real estate, including but not limited to construction; reconstruction; structural alterations; relocation or enlargement of any structure, road, driveway or appurtenance; grading; dredging; filling; paving; clearing; excavation; dumping; extraction or storage of soil or minerals; the storage of equipment or material.

***DISTURBANCE.*** Any activity on a development site requiring the cutting of trees, clearing, grading, grubbing, excavating, filling, or otherwise modifying the existing topography or forested features. (see limit of disturbance definition for more information)

***EASEMENT.*** A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which is included in the conveyance of land.

***FOREST.*** A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. This area must have a tree density of at least 100 living trees per acre with at least 50% of those trees having a two-inch or greater diameter at four and one-half feet above the ground. A ***FOREST*** may include duff, leaf litter, understory, and forest areas that have been cut but not cleared. ***FOREST*** does not include orchards or Christmas tree plantations.

***FOREST CONSERVATION.*** The retention of existing forest or the creation of new forest as regulated by this chapter.

***FOREST CONSERVATION AND MANAGEMENT AGREEMENT.*** An agreement regarding forest management as provided for in the Md. Code, Tax-Property Article, § 8-211.

***FOREST CONSERVATION PLAN (FCP).*** The component of the development plan which ensures that forest retention, reforestation, or afforestation will be accomplished pursuant to this chapter.

***FOREST MANAGEMENT.*** Any human intervention in a forest ecosystem, guided by a stewardship plan written by a licensed forester or qualified professional, that is intended to produce specific environmental, economic, and/or social objectives.

Commented [JB2]: Changing to match state code SB526

***FOREST MANAGEMENT PLAN.*** A plan prepared by a Maryland licensed forester establishing best conservation and management practices for a forested property.

***FOREST MITIGATION BANK.*** An area of land which has been intentionally afforested, ~~or~~ reforested, or designated qualified conservation for the express purpose of providing credits for afforestation or reforestation requirements.

Commented [JB3]: Changing to match state code

***FOREST MITIGATION BANK PLAN.*** A plan submitted for approval of a forest mitigation bank.

***FOREST STAND DELINEATION (FSD).*** The description of the existing natural features and vegetation on a site proposed for development, prepared according to the requirements of this chapter and the Technical Manual.

***GROWING SEASON.*** The period of consecutive frost-free days as stated in the current USDA Soil survey for Carroll County.

***HARDSHIP.*** The inability of a person to successfully comply with the provisions of this chapter relative to any regulated activity as a result of specific conditions existing on that site that severely restrict opportunities for mitigation while at the same time do not achieve the goals of this chapter.

***INDUSTRIAL.*** Those zoning districts described in Chapter 158, Zoning, as Industrial and their corresponding zoning districts lying within the incorporated municipalities.

***INSTITUTIONAL DEVELOPMENT AREA.*** Schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, fire stations, hospitals, religious establishments, golf courses, recreation areas, parks, and cemeteries.

**LIMIT OF DISTURBANCE (LOD).** The boundary of disturbance. For the purposes of this chapter, the limit of disturbance shall include:

(1) The foundation of any proposed dwelling plus a setback of at least 60 feet from the outside perimeter of the foundation. If a prior dwelling was demolished and the proposed dwelling is being constructed on essentially the same footprint, the 60 foot setback does not apply;

(2) The foundation of any proposed accessory structure;

(3) The proposed septic area including initial and replacement areas;

(4) The proposed driveway;

(5) Any other proposed grading or disturbance;

(6) Any existing, non-permitted disturbance occurring after the effective date of this chapter (December 8, 1992).

**LINEAR PROJECT.** A project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise contained in an application for subdivision such as electricity, gas, water, sewer, communications, railways, County roads, and other vehicular distribution systems. Such projects may traverse fee simple properties through defined boundaries or through easement rights.

**LOT.** A portion of a subdivision or a parcel of land intended for sale, lease, or building development.

**MAINTENANCE AGREEMENT.** The short-term management agreement associated with afforestation or reforestation plans required by § 150.413.

**MARYLAND LICENSED FORESTER.** An individual licensed in this state as a professional forester according to Md. Code, Business Occupations and Professions Article, Title 7.

**NATURAL REGENERATION.** The natural establishment of trees and other associated forest vegetation with at least 1,000 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

**NET TRACT AREA.**

(1) For subdivision, if the available lot yield on a property is being fully realized, the net tract area shall be the total area of the property. If not, the net tract area shall be at least that part of the property where a new lot or lots are created.

(2) For subdivision resulting in a remainder, remaining portion, or resulting land, the net tract area shall be that part of the property which will be developed, for which land use will be changed, or which will no longer be used for primarily agricultural activities.

(3) For regulated activity other than subdivision, the net tract area shall be that part of the property which will be developed or which land use will be changed.

(4) Any non-lot areas subject to a limit-of-disturbance shall also be included in the net tract area. This does not include septic repairs or replacement areas for existing structures.

(5) Existing forest being retained in an easement must be included in the net tract area.

**NONTIDAL WETLAND.** An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as “hydrophytic vegetation”. The determination of whether an area is considered a nontidal wetland shall be made in accordance with the publication known as the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*.

**OFF SITE.** An area not located within the net tract area of the site on which the regulated activity is proposed, is occurring, or has occurred.

**ON SITE.** The area located within the net tract area of the site on which the regulated activity is proposed, is occurring, or has occurred.

**ONE HUNDRED-YEAR FLOODPLAIN.** An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying flood waters during a 100-year frequency storm event. A **100-YEAR FLOOD** is a flood that has a 1% chance of being equaled or exceeded in any given year, as determined by the National Oceanographic and Atmospheric Administration and the National Weather Service.

**PERSON.** Includes the federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

**PRIORITY FUNDING AREA.** An area certified by the local government as a designated growth area and as recognized by the Maryland Department of Planning. A **PRIORITY FUNDING AREA** may be designated village, industrially zoned land, or an area satisfying the criteria outlined in Md. Code, State Finance and Procurement Article, Title 5, Subtitle 7B.

**PUBLIC UTILITY.** Any transmission line or electric generating station; or water, sewer, electric, gas, telephone, or television cable service line.

**QUALIFIED CONSERVATION.** The conservation of all or a part of an existing forest that:

- (1) Has been approved by the County for the purpose of establishing a forest mitigation bank; and
- (2) Is encumbered in perpetuity by a restrictive easement in the County Land Records to conserve its character as a forest.

Commented [JB4]: adding to match state code SB526

**QUALIFIED PROFESSIONAL.** An individual who meets the requirements of the Maryland Department of Natural Resources Forest Service pursuant to COMAR 08.19.06.01.

**REFORESTATION** or **REFOREST.** The creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre, with at least 50% of those trees having the potential of attaining a two-inch or greater diameter measured at four and one-half feet above the ground, within seven years. **REFORESTATION** for a linear project involving overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum heights or diameter criteria.

**REGULATED ACTIVITY.** Any of the following:

- (1) Subdivision;
- (2) Grading;
- (3) Any activity that requires a sediment control or grading permit; or

(4) Any activity that requires a building permit.

**REMAINDER.** The portion of a tract remaining after one or all eligible off conveyances have been created.

**REMAINING PORTION.** In the A (Agricultural) District, the land remaining after residential subdivision lots have been created from a legally established parcel of land through the subdivision process.

**RESOURCE MANAGEMENT SYSTEM PLAN.** A combination of conservation practices that when applied will meet or exceed the minimum quality criteria for all identified resource concerns on the entire farm. The Carroll Soil Conservation District identifies the resource concerns and approves and/or writes the plan.

**RESULTING LAND.** The land derived from the reduction of lot sizes when clustering pursuant to Chapter 155, which shall constitute a single lot.

**RETENTION.** The deliberate holding and protecting of existing trees, shrubs, or plants on the site according to standards established in the Technical Manual.

**SPECIMEN TREE.** A tree having a diameter of 30 inches or more measured at four and one-half feet above the ground, or a tree having at least 75% of the diameter of the current state champion tree of that species as designated by the Maryland Department of Natural Resources.

**STREAM.** A part of a water conveyance, either naturally or artificially created, that contains intermittent or perennial base flow of groundwater origin, but not including a ditch, pipe, or other structure that conveys surface runoff exclusively from storm events.

**STREAM BUFFER (Forest Conservation).** For the purposes of this chapter, not the Carroll County Water Resource Management Code (Chapter 154), the stream buffer is, measured from the top of each normal bank, all lands lying within 50 feet of an intermittent stream and 100 feet of a perennial stream. ~~Fifty feet plus two feet for each percent of land slope measured perpendicular to the stream, from the edge of bank to 100 feet from the edge of bank. Wetland areas and steep slopes equal to or greater than 25% may not be counted to satisfy the required buffer width.~~

Commented [JB5]: Changing to reflect state code SB526

**STREAM RESTORATION PROJECT.** An activity that:

(1) Is designed to stabilize stream banks or enhance stream functions 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) Maybe performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the State or local government to achieve or maintain water quality standards; and

(4) Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

**SUBDIVISION.** Any division of a parcel of land into two or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development, including those divisions referred to as off conveyances.

**TECHNICAL MANUAL.** The Carroll County Forest Conservation Technical Manual.

**TIMBER HARVESTING.** A tree-cutting operation affecting 1 or more acres of forest or developed woodland within a one year interval that disturbs 5,000 square feet or more of forest floor, but does not include grubbing or clearing of stumps or root mass.

**TREE.** A large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.

(2004 Code, § 115-1) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 06-08, passed 6-2-2006; Ord. 07-08, passed 5-3-2007; Ord. 2011-03, passed 5-17-2011)

**Editor's note:**

*This section was also amended on July 1, 2007 by Chapter 614, 2007 Session Laws.*

**§ 150.02 APPLICABILITY.**

(A) Except as provided in division (B) of this section, this chapter applies to:

- (1) Regulated activity on areas 40,000 square feet or greater;
  - (a) For subdivision, "areas" refers to the total size of the newly created, buildable lot or lots;
  - (b) For timber harvesting, "areas" refers to the size of the area being harvested;
  - (c) For all other regulated activity, "areas" refers to the area of disturbance or limit of disturbance. If multiple regulated activities related to the same property occur within a one year period, cumulative disturbance shall be assessed;

(2) Regulated activity that results in the cutting, clearing, or grading of more than ~~20,000~~ 40,000 square feet of forest. If multiple regulated activities related to the same property occur within a one year period, the cumulative cutting clearing and grading of forest shall be assessed.

**Commented [JB6]:** Increasing threshold to promote affordable housing even though this has negative implications for meeting our forest cover goals.

(B) Exemptions. This chapter does not apply to:

- (1) Highway construction activities under Natural Resources Article, § 5-103, Annotated Code of Maryland.
- (2) Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, § 8-211, Annotated Code of Maryland, that does not result in a clear-cut, provided that the property:
  - (a) Has not been the subject of application for a grading permit for development within seven years after the logging or harvesting operation; and
  - (b) Is the subject of timber harvest plan prepared by a Maryland licensed forester and a declaration of intent as provided for in § 150.03 of this chapter, and approved by the County; or
  - (c) Is the subject of a forest management plan developed for the entire tract, prepared by a Maryland licensed forester, which outlines management practices needed to meet the stated objectives for a minimum of 5 years.

(3) Agricultural activities **not resulting in a change in land use category, including the operation of orchards and tree farms and the construction and use of agricultural support buildings and other related**

structures built using accepted best management practices, ~~that disturb less than 20,000 square feet of forest.~~ Except that A person engaging in an agricultural activity clearing ~~20,000~~ 40,000 square feet or greater of forest, within a 1-year period, ~~shall may not~~ receive an agricultural exemption, ~~only if the activity is included in a resource management system plan and unless~~ the person:

**Commented [JB7]:** Changing to match state code.

(a) Files a declaration of intent as provided for in § 150.03, which includes:

- (i) A statement that the landowner will practice agriculture on that portion of the property for seven years from the date of the declaration; and
- (ii) A scaled drawing of the area to be cleared.

(b) ~~Provides a Schedule F farm income document.~~

**Commented [JB8]:** Added requirement to avoid illegitimate Ag exemptions

(4) ~~The cutting or clearing of public utility rights-of-way licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland, or~~ land for electric generating stations licensed under Public Utility Companies §§7-207 and 7-208 or 7-205, Annotated Code of Maryland, if:

**Commented [JB9]:** Clearing of Public utility ROW no longer exempt per Commissioner directive

(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.

(5) Routine maintenance or emergency repairs of public utility rights-of-way licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland.

(6) Except for a public utility subject to §150.02(B)(5) of this chapter, routine maintenance or emergency repairs of a public utility right-of-way if:

- (a) The right-of-way existed before the effective date of this chapter; or
- (b) The right-of-way's initial construction was approved under this chapter.

(7) A residential construction activity, conducted on an existing single lot of any size, of record at the time of application, provided that the activity:

(a) Does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest;

(b) Does not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan approved under this chapter; and

(c) Is the subject of a declaration of intent filed with the County, as provided for in § 150.03, stating that the lot will not be the subject of another regulated activity within seven years of the cutting, clearing, or grading of forest. If the lot contains less than 20,000 square feet of forest or if no forest is being cleared, a declaration of intent is not required.

(8) Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitles 5 or 6, Annotated Code of Maryland.

(9) Noncoal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland.

(10) Clear-cut logging, provided that:

(a) Silvicultural justification in the form of a forest management plan has been provided by a Maryland licensed forester and accepted by the County;

(b) The property has not been the subject of application for a grading permit for development for seven years after the logging occurs; and

(c) The property is the subject of a declaration of intent as provided for in § 150.03, approved by the County.

(11) Regulated activity that is the result of a federal or state regulatory order intended to force corrective action, or that may be a result of the inaction of an activity under the voluntary compliance or brownfields redevelopment programs.

(12) Land transfers by an owner of a working farm for the purpose of constructing a dwelling house intended for the use of ~~the owner or a child of the owner, if the activity:~~

(a) ~~The activity~~ does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest; ~~and~~

(b) ~~The activity is~~ the subject of a declaration of intent filed with the County, as provided in § 150.03, which states that transfer of ownership may result in loss of exemption; ~~and~~

(c) ~~A Schedule F farm income document is provided.~~

(13) A linear project conducted by a public utility, a municipality, or by the County, provided that the activity:

(a) Does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest; and

(b) Does not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan approved under this chapter.

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

(a) The transfer 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 a declaration of intent, as provided for in § 150.03.

(15) Development occurring on a previously developed site, located in the priority funding area, and the proposed net tract area is at least 70% covered by existing, impervious surface.

(16) Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal or trimming of trees, if the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, within any maintenance easement for access to the structure, or part of a Chesapeake Bay TMDL Watershed Implementation Plan (WIP).

(17) A stream restoration project, as defined in § 150.01 of this chapter, 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.

**Commented [JB10]:** Extends exemption and more closely matches state code.

**Commented [JB11]:** Added requirement to legitimize "working farm" designation

(18) Regulated activity on a subdivision lot previously exempted from this chapter, provided that the subdivision was granted preliminary approval before the effective date of this chapter (December 8, 1992).

(19) Regulated activity on a subdivision lot previously exempted from this chapter, provided that the amount of forest clearing proposed does not exceed the amount of forest clearing shown on the previously approved exemption plan.

(2004 Code, § 115-2) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 07-08, passed 5-3-2007; Ord. 2010-03, passed 4-1-2010; Ord. 2011-03, passed 5-17-2011)

### **§ 150.03 DECLARATION OF INTENT.**

(A) The purpose of the declaration of intent is to verify that the proposed activity is exempt under the provisions of § 150.02(B)(2), (3), (7), (10), (12), and (14). A declaration of intent shall be signed by the property owner whenever such exemption is claimed and shall be recorded prior to issuance of a permit.

(B) A declaration of intent runs with the land and shall bind any future purchasers of the property to the same extent as the original property owner.

(C) The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:

(1) Does not conflict with the purpose of any existing declaration of intent; and

(2) Complies with the applicable requirements for an exempted activity.

(D) If a regulated activity on the area covered by the declaration of intent occurs within 7 years of the effective date of the declaration of intent, there shall be:

(1) An immediate loss of exemption; and

(2) An enforcement action taken by the County, as appropriate, under this chapter.

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

(F) The County may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to do any or all of the following:

(1) Meet the retention, afforestation, and reforestation requirements established in § 150.06, 150.07, and 150.08;

(2) Pay a noncompliance fee, pursuant to the provisions of § 150.99, for each square foot of forest cut or cleared under the declaration of intent;

(3) Be subject to other enforcement actions appropriate under § 150.99; or

(4) File a declaration of intent with the County.

(G) In its determination of appropriate enforcement action, the County may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this chapter.

(2004 Code, § 115-3) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 07-08, passed 5-3-2007; Ord. 2011-03, passed 5-17-2011)

#### **§ 150.04 FOREST STAND DELINEATION.**

(A) At the beginning of the development process, the applicant shall submit, to the County, a FSD prepared in accordance with the Technical Manual.

(B) The FSD shall address the net tract area, and the forest conservation review fee shall be based upon this area.

(C) The FSD shall be prepared and signed by a Maryland licensed forester, Maryland licensed landscape architect, or a qualified professional.

(D) The FSD shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation.

(E) A simplified FSD may substitute for the FSD if:

- (1) No forest currently exists on the site; or
- (2) None of the existing forest on the site will be cut, cleared, or graded for the proposed use; and
- (3) All of the forest in the net tract area will be retained and protected by a forest conservation easement.

(F) An FSD is valid for 5 years from the date of approval, after which it must be updated.

(G) If changes occur to the forest, as determined by the County, the FSD approval may be revoked.

(2004 Code, § 115-5) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 07-08, passed 5-3-2007; Ord. 2011-03, passed 5-17-2011)

#### **§ 150.05 FOREST CONSERVATION PLAN.**

##### **(A) General Provisions.**

(1) At the beginning of the development process, the applicant shall submit, to the County, a FCP prepared in accordance with the Technical Manual.

(2) A FCP shall be submitted with a subdivision plan, site plan, grading permit, or building permit.

(3) If a predevelopment harvest is proposed, a Phase I FCP shall be prepared in accordance with the Technical Manual.

(4) In developing a FCP, the applicant shall give priority to techniques for retaining existing forest on the site.

(5) If existing forest on the site subject to a FCP cannot be retained, the applicant shall demonstrate to the satisfaction of the County:

(a) How techniques for forest retention have been exhausted;

(b) Why the priority forests and priority areas specified in § 150.06(A) cannot be left in an undisturbed condition:

1. If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with § 150.08 of this chapter.

2. Where on the site in priority areas afforestation or reforestation will occur in compliance with § 150.08 of this chapter.

(c) How the disturbance to the priority forests and priority areas specified in § 150.06(B) qualifies for a variance.

(6) If the applicant proposes to purchase credits from a forest mitigation bank or make a payment into the forest conservation fund, they shall demonstrate, to the satisfaction of the County, that the requirements for afforestation or reforestation on-site or off-site cannot be reasonably accomplished.

(7) Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory requirements and the requirements of this law subject to the following:

(a) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted towards forest conservation requirements under this law;

(b) For the purpose of calculating reforestation mitigation under this chapter, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the FCP and subtracted on an acre-for-acre basis from the total amount of forest to be cut or cleared as part of a regulated activity;

(c) Nontidal wetlands shall be considered to be priority areas for retention and replacement;

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

(B) **Plan Provisions.** A FCP shall:

(1) Be prepared by a Maryland licensed forester, a Maryland licensed landscape architect, or a qualified professional. A stamp or certification by the preparer shall appear on any submission of the FCP.

(2) Include information from the approved FSD.

(3) Include a map of the site.

(4) Include a table that lists, in square feet, the net tract area, the total existing forest, area of forest conservation required, and the area of forest conservation that the applicant proposes to provide including both on-site and off-site areas.

(5) Include a forest conservation worksheet.

(6) Include a clear graphic indication of the forest conservation to be provided on the site, showing areas where retention of existing forest, reforestation, or afforestation is planned.

(7) Include a construction timetable showing the sequence for tree conservation procedures which will allow for sufficient protection of trees prior to or during any construction, clearing, or grading.

(8) Include an afforestation and/or reforestation plan, if required, with a timetable for planting, description of the site, site preparation methods, species, size and spacing of planting stock, and any other information required by the Technical Manual.

(9) Incorporate standards for trees planted adjacent to electrical utility rights-of-way as set forth in the Technical Manual.

(10) Show locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation.

(11) Show the planned limit of disturbance.

(12) Show planned stockpile areas.

(13) Incorporate a schedule for completion to assure that all required afforestation and reforestation occurs as required by § 150.08.

(14) Incorporate the details of a maintenance agreement, describing how the areas designated for afforestation and reforestation will be maintained to ensure protection and satisfactory establishment, including:

(a) Watering;

(b) Reinforcement planting provision if survival rates fall below required standards, as set forth in § 150.13.

(C) **Public Notice and Judicial Review.**

(1) At least 20 days before approval of the Forest Conservation Plan, Carroll County shall:

(a) Provide notice that is consistent with Carroll County's notice requirements to all property owner's abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in § 150.06; and

(b) Provide opportunity for public comment as follows:

1. On a net tract area of at least 5 acres and if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval; or

2. For any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

(2) Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent.

(3) A person petitioning for a judicial review of an approved forest conservation plan shall file the petition with Carroll County not later than 30 days after approval of the forest conservation plan. Any judicial review of a forest conservation plan shall be:

(a) Conducted in accordance with the Maryland state law; and

(b) Limited to the record compiled by Carroll County.

**Commented [CE12]:** Does it sound better as, "no later"?

**Commented [JB13R12]:** The proposed language exactly matches the State language so I am not inclined to change it.

**Commented [JB14]:** Added to match state code SB 526

**(D) Enforcement Provisions.**

(1) If a FCP is required by this chapter, a person may not cut, clear, or grade until the County has approved the FCP.

(2) Any person who fails to limit disturbance to the limits-of-disturbance delineated on the FCP shall be in violation of this chapter.

(3) The FCP may not be amended without approval from the County.

(4) The County may revoke an approved FCP if it finds that:

(a) A provision of the plan has been violated;

(b) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact;

(c) Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or

(d) Approval of the FSD is revoked.

(2004 Code, § 115-6) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 07-08, passed 5-3-2007; Ord. 2010-03, passed 4-1-2010; Ord. 2011-03, passed 5-17-2011)

**§ 150.06 RETENTION PRIORITIES.**

(A) The following categories of trees, shrubs, or other associated vegetation, and forest resources located in specifically identified sensitive locations shall be considered a priority for retention and protection. These trees, shrubs, or other associated vegetation and forest resources shall be left in an undisturbed condition and protected from disturbance during and until on site construction activities are complete, unless the applicant has demonstrated to the satisfaction of the County that reasonable efforts made to protect them have been unsuccessful or has provided evidence to the County that identifies certain individual trees in specific locations as unreasonable liabilities to health and safety and that efforts to continue their existence would either be economically prohibitive or otherwise unwarranted:

(1) Trees, shrubs, and plants located in sensitive areas including wetlands and their buffers, 100-year floodplains, ~~intermittent streams and their buffers of at least 50 feet from the stream channel, perennial streams and their buffers of at least 100 feet from the stream channel,~~ steep slopes, and critical habitats; ~~and~~

(2) Forests that connect large undeveloped or heavily vegetated tracts of land lying within or adjacent to the site.

(3) Forest suitable for forest interior-dwelling species;

(4) Forest located in a Tier II or Tier III high quality watershed as identified by the Maryland Department of the Environment;

(5) Forest located in a water resource protection zone, a reservoir watershed, or a wellhead protection area as identified by Carroll County; and

(6) Forests in urban areas that are most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution; as delineated in the priority urban forest map in the State Forest Conservation Technical Manual requirements.

Commented [JB15]: Changing to match state code SB526

(B) The following categories of trees, shrubs, or other associated vegetation, and forest resources located in specifically identified sensitive locations shall be considered a priority for retention and protection and shall be left in an undisturbed condition and protected from disturbance during and until on site construction activities are complete, unless the applicant has demonstrated to the satisfaction of the County that the applicant qualifies for a variance in accordance with § 150.4416.

(1) Rare/endangered. Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the United States Fish and Wildlife Service or the Maryland Department of Natural Resources.

(2) Historic significance. Trees that:

(a) Are part of a historic site as recognized by the National Register of Historic Places, the Maryland Historical Trust, the Carroll County Historic Preservation Commission, or municipal historic body;

(b) Are associated with a historic structure as recognized by the National Register of Historic Places, the Maryland Historical Trust, the Carroll County Historic Preservation Commission, or municipal historic body; or

(c) Have been designated by the State or the County as a national, state, county, or municipal champion tree.

(3) Specimen trees.

(a) A variance approval will be required to disturb the critical root zone of the tree or remove the tree entirely.

(b) If a good or excellent condition specimen tree is not an invasive species, and is to be removed, its loss shall be mitigated for using the following formula: DBH of specimen tree removed equals number of trees replaced based on a one-inch for one-inch replacement. An acreage equivalent can be derived by dividing the DBH of the specimen tree by 200 (e.g., a 30-inch DBH tree shall be replaced with 30 one-inch caliper trees or 0.15 acre of equivalent planting or banking).

(C) The County shall issue written findings and justification for any clearing of a priority retention area described in §150.06(A) or 150.06(B). Any judicial review of a final determination made under this paragraph shall be conducted in accordance with the Maryland state law and limited to the record compiled by the County.

Commented [JB16]: Changing to reflect state code SB526

(2004 Code, § 115-7) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2010-03, passed 4-1-2010; Ord. 2011-03, passed 5-17-2011)

#### § 150.07 RETENTION, AFFORESTATION, AND REFORESTATION.

(A) Retention.

(1) On-site forest retention is the primary goal of this chapter. Off-site retention, afforestation, and reforestation shall be utilized only after techniques for retaining existing, on-site forest have been exhausted.

(2) Forest retention areas:

(a) Shall be ~~no less than~~ at least 35 feet wide and ~~shall be at least~~ 10,000 square feet in size, or ~~Areas not meeting this criteria must be~~ adjacent to existing off-site forest, or adjacent to a proposed afforestation or reforestation area. ~~Forest, within the net tract area, that fails to meet one or more of these criteria, must be or~~ shown as cleared;

(b) Shall not be the result of a grant funded planting or a planting used to meet Chesapeake Bay TMDL requirements; and

(c) Shall not be encumbered by a conflicting easement or right-of-way.

(d) In excess of the minimum forest threshold prescribed in §150.07(B) may be used to establish forest mitigation banks that utilize qualified conservation per §150.11.

(3) In addition to §150.07(A)(2), off-site retention areas shall:

(a) Be located in Carroll County; and

(b) Qualify as a retention priority per § 150.06.

(B) Afforestation.

(1) Except as provided in (2) below, the minimum forest threshold for any zone shall be 20%. Any net tract area which is comprised of less forest than the minimum threshold shall be afforested to achieve the minimum threshold.

(2) In areas zoned commercial or industrial, or institutional development areas, the minimum forest threshold shall be 15%.

(3) ~~Linear projects that involve no change in land use and solar photovoltaic facilities are not subject to afforestation requirements.~~

(4) Afforestation performed pursuant to this chapter shall conform to the requirements of §150.08 and ~~150.4012~~ and the Technical Manual.

(C) Reforestation.

(1) Forest which is cut or cleared, measured to the nearest one-tenth acre, shall be reforested at a ratio of one acre planted for every one acre of forest removed; and

(2) ~~For all existing forest cover located in a priority funding area, and not identified as a priority for retention per § 150.06, the area of forest cut or cleared, measured to the nearest one-tenth acre, shall be reforested at a ratio of one-half ace planted for every one acre removed.~~

(3) Reforestation performed pursuant to this chapter shall conform to the requirements of §150.08 and ~~150.4012~~ and the Technical Manual.

(D) ~~All unforested stream buffers within the net tract area that are not planted per compliance with § 150.07(B) and 150.07(C), must also be afforested or reforested, unless the applicant demonstrates to the County that planting in the riparian buffer:~~

(1) ~~Would be in conflict with allowable uses as established for the riparian buffer;~~

**Commented [JB17]:** Incorporating our off-site retention policy

**Commented [BD18R17]:** "part of a Chesapeake Bay TMDL Watershed Implementation Plan (WIP)"

Is it part of a WIP or part of a program to implement the WIP? If we say it's part of a WIP, I would interpret that as meaning it is mentioned in the WIP document. 🤔

**Commented [JB19R17]:** Language was revised per this comment

**Commented [JB20]:** Changing to match state code SB526

**Commented [JB21]:** Changing to reflect state code SB526

(2) Is located on park property and conflicts with the mission and established stewardship practices of the park; or

(3) Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

Commented [JB22]: Changing to reflect state code SB526

(4) Will be accomplished as a forest mitigation bank per §150.11.

(E) Afforestation and reforestation plantings are prohibited on individual residential lots less than three acres in size.

(F) Whenever afforestation or reforestation is to occur off site, the applicant shall provide the County:

- (1) A copy of the executed deed conveying title to the site;
- (2) An executed conservation easement agreement;
- (3) Written evidence of a landowner's consent to the use of a selected site; or
- (4) Other written evidence of a possessory or ownership interest in a selected site.

(2004 Code, § 115-8) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2011-03, passed 5-17-2011)

#### **§ 150.08 PRIORITIES AND TIME REQUIREMENTS FOR REFORESTATION AND AFFORESTATION.**

(A) **Technique priority.** The priority for afforestation and reforestation, after techniques for retaining ~~existing~~ forest ~~on the site~~ have been exhausted, is as follows:

- (1) On site afforestation or reforestation, if technically feasible, using natural regeneration or tree planting techniques which meet the requirements of the Technical Manual;
- (2) Off site afforestation or reforestation within the County, using natural regeneration or tree planting techniques which meet the requirements of the Technical Manual;
- (3) Purchase of credit from a County approved forest **mitigation** bank. Use of a forest bank may be approved if on site afforestation or reforestation and off site afforestation or reforestation are deemed impossible, impractical, or when complying with those higher priorities would create an undue hardship.

(B) **Location priority.** Reforestation or afforestation shall, if technically feasible, be conducted in the following order of priority:

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

(5) Stabilize slopes of 25% or greater and slopes of 15% or greater with a Soil K value greater than 0.35 including the slopes of ravines or other natural depressions;

(6) Establish buffers between areas of differing land uses where appropriate; and

(7) Establish forest areas adjacent to existing forests so as to increase the overall area of contiguous forest cover, where appropriate.

(C) **Time frames.**

(1) Any planting areas proposed outside the approved limits of disturbance may be planted upon approval of the FCP.

(2) A person required to conduct afforestation or reforestation on site shall accomplish it within one year of grading final approval.

(3) A person required to conduct afforestation or reforestation off site shall accomplish it within one year of the issuance of the grading or building permit.

(4) A person required to purchase forest mitigation bank credit shall do so after the final FCP is approved but before grading or building permit approval. If mylars are required for a project, forest bank credit shall be purchased prior to mylar approval.

(2004 Code, § 115-10) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2011-03, passed 5-17-2011)

**§ 150.09 FOREST CONSERVATION FUND.**

(A) There is established a forest conservation fund in Carroll County that meets the requirements of Natural Resources Article, §5-1610(h-1). Annotated Code of Maryland.

(B) If a person subject to this Code demonstrates to the satisfaction of the County that requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished and appropriate credits generated by a forest mitigation banking in Carroll County are not available, the person shall contribute money into the Carroll County forest conservation fund.

(C) The County shall establish a per square foot compensation rate. The rate may differ for projects inside and outside the priority funding area. Rates may be adjusted by the County based on the previous year's inflation rate.

(D) Payment to the forest conservation fund must be accomplished after the final FCP is approved but before grading or building permit approval. If mylars are required for a project, payment shall be made prior to mylar approval.

(E) After receipt of payment, the County shall accomplish the reforestation or afforestation for the equivalent number of acres for which the money is deposited within two years or three growing seasons, whichever is a greater time period.

(F) All penalties, fines, fees, or interest paid pursuant to this chapter shall also be deposited into the forest conservation fund.

(G) Money deposited in the forest conservation fund:

- (1) May be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, preparation, maintenance of existing forests, and achieving urban canopy goals;
- (2) Shall be deposited in a separate forest conservation fund; and
- (3) May not revert to the general fund.

(H) Sites for afforestation or reforestation using fund money shall be located in Carroll County.

**Commented [JB23]:** Adding as a fail safe measure if we run out of forest bank credit. A forest conservation fund rate sheet will be developed.

#### § 150.10 USE OF A FOREST MITIGATION BANK.

- (A) If a person subject to this chapter demonstrates to the satisfaction of the County that requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person may purchase credits from an approved Carroll County forest mitigation bank. A credit is required for each tenth of an acre of an area or required planting.
- (B) The County will only consider a sale of forest bank credit valid if it is made to fulfill a FCP approved by the County. The credits shall be debited from the forest mitigation bank after the final FCP is approved but before grading or building permit approval. If mylars are required for a project, credit shall be purchased prior to mylar approval.
- (C) Forest mitigation banks that utilize planting new forests may be used to meet up to 100% of the required afforestation or reforestation for a given project.
- (D) Forest mitigation banks that utilize qualified conservation may be used to meet up to 100% of the required afforestation of a given project.
- (E) If a person subject to this chapter is developing a residential dwelling on an existing single lot, of record at the time of application, forest mitigation banks that utilize qualified conservation may be used to meet up to 50% of the required reforestation. The other 50% must be accomplished through planting or forest mitigation banks that utilize planting new forest.

**Commented [JB24]:** Changing to match state code (SB526) with two exceptions. First, the first sentence of (B) is added to prevent premature purchase of credit or the brokering of credit. Second, (D) details that qualified conservation is only for afforestation and a 100% instead of 50% is applied.

#### § 150.11 ESTABLISHING FOREST MITIGATION BANKS.

- (A) A person ~~who owns property, which is not forested at the time of application,~~ may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this chapter.
- (B) The forest mitigation bank shall:
  - (1) Afforest, ~~or~~ reforest, or utilize qualified conservation in an area of land in accordance with a forest mitigation bank plan;
  - (2) Be protected by an easement which limits the use of the land in the bank to those activities which are consistent with forest conservation, requires the land in the bank to remain forested in perpetuity, and is enforceable by the County;
  - (3) For afforested or reforested areas, use native plant materials for afforestation or reforestation; and
  - (4) Cause trees to be planted which conform to §150.08(B);

(5) For qualified conservation, be located within a priority retention area as identified in §150.06(A);

(C) A person proposing to create a forest mitigation bank shall submit to the County a:

(1) Completed application and vicinity map of the proposed forest mitigation bank site.

(2) Forest mitigation bank plan which contains:

(a) A vicinity map of the proposed mitigation bank site;

(b) A simplified forest stand delineation which meets the criteria in §150.04;

(c) For afforested or reforested areas, a detailed afforestation or reforestation plan, which shall include a timetable and description of the site and soil preparation needed, species, size, and spacing to be utilized, prepared by a Maryland licensed forester, a licensed landscape architect, or a qualified professional; and

(d) For afforested or reforested areas, a proposed maintenance agreement that:

1. Sets forth how the areas afforested or reforested will be maintained to ensure protection and satisfactory establishment;

2. Complies with §150.13(A); and

3. Includes watering and reinforcement planting provisions if survival falls below required standards;

(3) Copy of the deed to the property;

(4) Survey of the bank site for inclusion in the deed of easement;

(5) Title report to assure that:

(a) The property is not encumbered by any covenants or other types of restrictions which would impair the property's use as a forest bank; and

(b) There is legally sufficient access to the forest bank site which can be used by the County to inspect the forest bank; and

(6) Description of the system to be used by the person owning and operating the forest mitigation bank to track credits purchased debited from the bank.

(D) The County shall review the application for a forest mitigation bank and shall determine whether the location, size, and other characteristics of the area property are conducive to the successful establishment of an afforestation, reforestation, or qualified conservation forest. The County may approve or deny the application based upon these considerations and the criteria listed in §150.08(B).

(E) After an area is approved as a location for a forest mitigation bank, the applicant may submit a forest mitigation bank plan to the County for review. The County shall review and approve or deny the plan based on the requirements of this chapter and the Technical Manual. Once the County has approved the plan, the applicant may proceed, consistent with the plan, to establish qualified conservation or afforested or reforested areas a forest either by planting the area or natural regeneration by allowing the area to regenerate naturally.

(F) **Forest mitigation** bank sites shall be certified by the County prior to sale of bank credit.

(1) When natural regeneration is proposed, a forest **mitigation** bank may not be certified for sale of credit until:

- (a) An easement in accordance with §150.~~13~~15 has been recorded; and
- (b) It has been demonstrated, to the satisfaction of the County, that the area allowed to naturally regenerate meets or exceeds the standards of the Technical Manual.

(2) When tree planting is proposed, a forest bank may not be certified for sale of credit until one of the following sequences has been completed:

(a) **Bonding sequence**

- 1. The site has been planted in accordance with the approved forest bank plan;
- 2. A maintenance agreement in accordance with § 150.~~13~~13 and an easement in accordance with §150.~~13~~14 have been recorded; and
- 3. A suitable guaranty for the planting has been provided pursuant to § 150.~~13~~13.

(b) **Non-bonding sequence**

- 1. The site has been planted in accordance with the approved forest bank plan;
- 2. An easement in accordance with §150.~~13~~15 has been recorded; and
- 3. An inspection period in accordance with §150.~~13~~13 has been completed, and it has been demonstrated, to the satisfaction of the County, that the planting meets or exceeds the standards of the Technical Manual.

(3) **When qualified conservation is proposed, a forest mitigation bank may not be certified for sale of credit until:**

- (a) **An easement in accordance with §150.15 has been recorded; and**
- (b) **Forest conservation signs have been installed in accordance with the approved plan.**

**Commented [JB25]:** Incorporating qualified conservation into forest mitigation banking

(G) After a forest bank has been certified for sale of credit, the bank may be used to meet the afforestation and reforestation requirements of this chapter for development within Carroll County. When bank credit is purchased, the portion purchased shall be deducted from the total acreage of the bank.

(H) The maintenance of the forest bank is the responsibility of the forest bank owner. During the maintenance period, the County will inspect the site in accordance with §150.~~13~~13 and the Technical Manual.

(2004 Code, § 115-19) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

#### § 150.~~10~~12 **TREE SPECIES.**

Tree species used for afforestation or reforestation shall be native to the region, when appropriate, and selected from a list of approved species in the Technical Manual.

(2004 Code, § 115-11) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

**§ 150.113 MAINTENANCE AGREEMENT, FINANCIAL SECURITY, AND INSPECTION FOR AFFORESTATION AND REFORESTATION.**

(A) A person required by this chapter to conduct afforestation or reforestation shall enter into a maintenance agreement with the County. The maintenance agreement shall:

- (1) Except as provided in §150.13(D)(3), have a term of at least 5 years;
- (2) Assure that the afforestation and reforestation are conducted and maintained in accordance with the approved FCP and the Technical Manual.
- (3) Be provided prior to recordation of a subdivision, or issuance of a grading or building permit.

(B) A person required by this chapter to conduct afforestation or reforestation shall provide a suitable guaranty to the County. The guaranty shall:

- (1) Be in the form of a bond, an irrevocable letter of credit, or other security approved by the County Attorney.
  - (2) Equal the estimated cost of forest conservation, as determined by the County; and
  - (3) Be provided prior to recordation of a subdivision, or issuance of a grading or building permit.
- (C) For afforestation or reforestation by natural regeneration, inspections and release of the guaranty shall occur as follows:

- (1) Once the natural regeneration area is prepared, the County shall perform an initial inspection.
- (2) If the natural regeneration area is prepared in accordance with the approved FCP and the Technical Manual, the inspection shall be approved and the inspection period shall begin. The inspection period shall last a minimum of 5 years.
- (3) Final inspection approval shall be granted, the inspection period shall conclude, and release of the guaranty shall occur when it has been demonstrated, to the satisfaction of the County, that the natural regeneration area meets or exceeds the standards of the Technical Manual.

(D) For afforestation or reforestation using tree planting, inspections and releases of the guaranty shall occur as follows:

- (1) Once the planting occurs, the County shall perform an initial inspection. If the planting is executed in accordance with the approved FCP and the Technical Manual, the inspection shall be approved and the inspection period shall begin.
- (2) After 2 years and 6 months, if the planting associated with the afforestation or reforestation meets or exceeds the standards of the Technical Manual, a percentage of the guaranty may be released. Refer to the Technical Manual to determine this percentage.
- (3) Between 3 and 5 years, if the planting associated with the afforestation or reforestation meets the definition of forest and meets or exceeds the standards of the Technical Manual, final inspection approval

shall be granted, the inspection period shall conclude, and the remaining amount of the guaranty shall be released.

(4) After 5 years, if the planting associated with the afforestation or reforestation meets or exceeds the standards of the Technical Manual, final inspection approval shall be granted, the inspection period shall conclude, and the remaining amount of the guaranty shall be released.

(5) If at the end of the 2 year and 6 month inspection or the 5 year inspection, survival rates do not meet the standards of the Technical Manual, the afforestation or reforestation area shall be replanted to the full stocking level and a 5 year extension of the inspection period, maintenance agreement, and bond shall be required.

(2004 Code, § 115-12) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

#### **§ 150.1214 STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES.**

(A) The limit of disturbance (LOD) shall be identified, surveyed, delineated on the FCP, and clearly marked in the field. Extending the LOD beyond the preapproved limits, without obtaining prior approval from the County, is a violation of this chapter.

(B) Before the initiation of any disturbance on any site that has an approved FCP, it shall be demonstrated to the County that tree protection measures have been installed in a manner consistent with the approved FCP and the standards of the Technical Manual.

(C) All installed protective measures shall remain in place and be maintained in good condition until completion of construction. Tree protection fence shall only be removed when removal of sediment control devices is approved. Forest conservation signs along the boundaries of forest conservation easement areas shall remain in perpetuity.

(D) Damage occurring to areas of forest or specific trees identified for retention and protection during construction due to a lack of maintenance of protection measures is a violation of this chapter.  
(2004 Code, § 115-13) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

#### **§ 150.1315 FOREST CONSERVATION EASEMENTS.**

(A) Any retained forest and any areas afforested or reforested, located within the net tract area of an approved FCP, shall be protected by a forest conservation easement.

(B) The easement shall restrict uses in areas of forest conservation to those uses that are designated and consistent with forest conservation.

(C) The easement shall provide the County access for inspection.

(D) The easement shall be deeded to the County, recorded in the Land Records of Carroll County, and remain in perpetuity.

(E) The easement shall be conveyed to the County at the time of subdivision recordation, site plan approval, permit approval, or other final approval by the County, as applicable.

(F) Release of an easement may be granted in certain circumstances. Refer to the Technical Manual.

#### **§ 150.1416 VARIANCES.**

(A) The County may grant a variance from any of the technical requirements included in this chapter, if there are exceptional circumstances such that:

(1) Strict adherence to the provisions of this chapter could result in unnecessary hardship or environmental degradation;

(2) The project is wholly in response to the regulatory requirements of another federal, state, or local law or consent order and is intended to result in impact mitigation or environmental enhancement;

(3) It can be proven that some action associated with the project will result in measurable environmental enhancement that can be equated to the estimated benefit which would have been achieved if the technical requirement that the applicant is requesting relief from would have been accomplished; or

(4) It can be proven that adherence to the technical requirement would not be necessary to fulfill the purpose of this chapter.

(B) For any development within an incorporated municipality, the Mayor of that entity shall be notified within 15 days of receipt of a request for a variance.

(C) A written request for a variance shall be submitted to the County and shall state the specific variance sought and the reasons supporting the granting of that variance. A variance may not be granted unless and until sufficient specific reasons justifying the variance are provided to the County such that it is proven that the purpose of this chapter will not thereby be compromised. An applicant for a variance shall:

(1) Describe the special conditions or exceptional circumstances peculiar to the property which would cause the undue hardship or that prevent the applicant from complying with this chapter with on site or off site mitigation and any evidence that compliance would result in an environmentally degraded condition on or off site;

(2) Demonstrate in sufficient detail that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;

(3) Demonstrate in sufficient detail that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

(4) Demonstrate in sufficient detail that the request does not arise from a condition relating to land or building use, permitted or nonconforming, on a neighboring property; and

(5) Demonstrate in sufficient detail that the granting of a variance will not adversely affect water quality or result in an environmentally degraded condition on or off site.

(D) In granting a variance to this chapter, the County shall issue specific written findings of fact that the applicant has met the requirements of subsection (C) above, and that the granting of the variance is designed in a manner consistent with the spirit and purpose of this chapter.

(E) Notice of a request for a variance shall be given to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.

(F) The Maryland Department of Natural Resources may intervene in an administrative, judicial or other original proceeding or appeal concerning an approval of a variance.

(2004 Code, § 115-14) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

~~§ 150.15 FOREST CONSERVATION FUND.~~

~~(A) The County shall create a Forest Conservation Fund (the "Fund") to be administered by the Department of the Comptroller, or its successor agency.~~

~~(B) All penalties, fines, fees, or interest paid pursuant to this chapter shall be deposited into the Fund. All money deposited into the Fund shall be used for the implementation of this chapter.~~

~~(2004 Code, § 115-16) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2011-03, passed 5-17-2011)~~

Commented [JB26]: Moved to 150.09

~~§ 150.16~~17 APPEALS.

(A) Any person aggrieved by the levying of any fines, penalties, or the failure to grant a variance may appeal the action to the County Commissioners or a Board of Appeals appointed by the County Commissioners, which shall hold a hearing.

(B) The appeal shall:

(1) Be filed in writing within 30 days of the date of written transmittal of the final decision or determination to the applicant, or notice of violation; and

(2) State clearly the grounds on which the appeal is based.

(C) Appeal fees:

(1) The appellant shall pay a nonrefundable filing fee as determined by the County; and

(2) The appellant shall pay all costs of the appeal as assessed by the County Commissioners or Board of Appeals.

(2004 Code, § 115-17) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

~~§ 150.17~~18 ANNUAL REPORT.

On or before March 1 of each year, the County shall submit to the State Department of Natural Resources, a report which contains the:

(A) Number, location, and type of projects subject to the provisions of this chapter;

(B) Amount and location of acres cleared, conserved, and planted, including any areas located in the 100 year floodplain, in connection with a development project;

(C) Amount of reforestation and afforestation fees and noncompliance penalties collected and expended, the number of acres for which the fees were collected, and the number of acres reforested, afforested, or conserved using the fees;

Commented [JB27]: Changing to match state code SB526

(D) Costs of implementing the forest conservation program;

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

(F) Number of acres debited from each forest bank since the last annual report;

(G) Forest banks inspected since the last annual report;

(H) Number, location, type of violation, and type of enforcement activity conducted in accordance with this chapter; and

(I) Size and location of all conserved and planted forested areas submitted in an electronic geographic information system or computer-aided design format.

(2004 Code, § 115-18) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2010-03, passed 4-1-2010)

#### **§ 150.1819 ADOPTION OF TECHNICAL MANUAL.**

The County shall adopt a Technical Manual by resolution of the County Commissioners of the County. All development shall be subject to the requirements established in this chapter and to the standards established in the Technical Manual.

(2004 Code, § 115-20) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004)

(2004 Code, § 115-21) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 07-08, passed 5-3-2007)

#### **§ 150.1920 SUBMITTAL STANDARDS.**

A forest conservation easement plat or metes and bounds description shall be based upon the Maryland Coordinate System and comply with the management standards and design criteria found in the Technical Manual. Easements shall include a point of beginning based upon the Maryland Coordinate System, North American Datum of 1983/99. The metes and bounds description shall be accompanied by a special purpose plat.

(2004 Code, § 115-22) (Ord. 98-4, passed 11-18-1998; Ord. 02-03, passed 3-14-2002; Ord. 03-04, passed 1-30-2003; Ord. 04-05, passed 4-1-2004; Ord. 2011-03, passed 5-17-2011)

#### **§ 150.99 PENALTIES.**

(A) Violations.

(1) The County may issue a stop work order against any person who violates any provision of this chapter or any regulation, order, approved plan, or management agreement.

(2) Any person convicted of violating the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than \$50,000 or imprisonment not exceeding one year or both for each violation, with costs imposed in the discretion of the court. Each day that a violation continues shall be a separate offense.

(3) Any person who violates a provision of this chapter or fails to comply with any of the requirements of this chapter, will be subject by the County for performing all necessary corrective actions. If satisfactory corrections of a Notice of Violation (NOV) are not made by the owner within a reasonable period of time as determined by the County, not exceeding 30 days after issuance of the notice of violation, the County has the right to enter onto the property and perform the work necessary to correct the violation and the owner of the facility shall be assessed the cost of the work. Penalties may be collected by placing a lien on the property

or by including the cost of the work on the property tax bill and collecting the cost as ordinary taxes.

(B) Additional penalties; civil penalties.

(1) In addition to any other penalty set forth in this chapter, a person who violates this chapter, the regulations adopted under this chapter, the forest conservation plan, any management agreement, or easement may be assessed a penalty of \$.30 per square foot of the area found to be in noncompliance.

(2) In addition to any other penalty set forth in this chapter, the County may institute injunctive or other appropriate action or proceedings of law to correct violations of this chapter. Any court of competent jurisdiction shall have the right to issue temporary or permanent restraining orders, injunctions, or other appropriate forms of relief.

(3) The County may issue a civil fine/penalty of not more than \$10,000 per day. Each day that a violation continues shall be a separate offense.

(4) A court of competent jurisdiction may consider the cost of restoring the area unlawfully disturbed.