

8-3 FOREST CONSERVATION REQUIREMENTS

Unless otherwise specified, development activities are subject to the general development requirements of Article 4 and the subdivision process (Article 7)

8-3.01 Purpose

- A. The Forest Stand Delineation and Forest Conservation Plans implement forest conservation, reforestation, and afforestation requirements for certain land use categories and certain regulated activities as described in this Section.
- B. This Section of the Zoning Ordinance implements the provisions of the Maryland Forest Conservation Act (codified in Natural Resources Article, Title 5, Subtitle 16 and Code of Maryland Regulations, Title 8, Subtitle 19), as amended from time to time.

8-3.02 Exemptions

The provisions of Section 8-3 of this Ordinance do not apply to:

- A. Highway construction activities under Natural Resources Article, §5-103, Annotated Code of Maryland;
- B. Areas governed by the Calvert County Critical Area Program (see Section 8-1 of this Ordinance);
- C. Commercial logging and timber harvesting operations, including harvesting subject to the Forest Conservation and Management Program under the Tax-Property Article, §8-211, Annotated Code of Maryland, that are completed on property which:
 1. Has not been the subject of an application for a grading permit for development within five years after the logging or timber harvesting operation, and after which time the property shall be subject to the forest conservation regulations, and
 2. Is the subject of a Declaration of Intent as provided for in Section 8-3.03 which includes:
 - a. a sketch map of the property showing the area to be harvested;
 - b. a Timber Harvest Plan prepared by a professional forester; and
 - c. a sediment and erosion control plan approved by the Calvert County Soil Conservation District.
- D. Agricultural activities on land assessed by the State as agricultural and not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, except that a person who is engaging in an agricultural activity who clears 40,000 square feet or greater of forest within a one-year period may not receive an agricultural exemption unless the person files a Declaration of Intent as provided for in Section 8-3.03 which includes:
 1. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five years from the date of the declaration, and

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2. A sketch map of the property, which shows the area to be cleared.
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- E. The cutting or clearing of public utility rights-of-way licensed under Public Utility Companies Articles 7-707 and 7-208 or 7-205, Annotated Code of Maryland, or land for electric generating stations licensed under Public Utility Companies Articles [7-207 and 7-208 or 7-205], Annotated Code of Maryland, as amended from time to time if:
 1. Required certificates of public convenience and necessity have been issued under the State Forest Conservation Act; and
 2. Cutting or clearing is conducted to minimize the loss of forest.
 - F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland, as amended from time to time;
 - G. Except for a public utility subject to Section 8-3.02.F, any routine maintenance or emergency repairs of a public utility right-of-way or road right-of-way if:
 1. The right-of-way existed before January 1, 1993; or
 2. The right-of-way's initial construction was approved under or exempted from the Calvert County Forest Conservation Program;
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- H. Any single-family residential development or residential construction activity conducted on an existing single lot of any size which existed prior to January 1, 1993, if the activity
 1. does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest on lots greater or equal to 40,000 square feet in size.
 2. does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous Forest Conservation Plan approved under these regulations; and
 - I. Non-coal surface mining regulated under Natural Resources Article, Title 7, Subtitle 6A, Annotated Code of Maryland;
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- J. An activity required for the purpose of constructing a dwelling intended for the use of the owner, or a child of the owner, if the activity:
 1. does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest; and
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2. No priority areas for retention are included in the plat unless they are recorded as Forest Retention Area; and
 3. is the subject of a Declaration of Intent as provided for in Section 8-3.03.
- K. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, in a portion of a lot or parcel, if:
 1. The transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and
 2. Both the grantor and grantee file a Declaration of Intent as provided for in Section 8-3.03.

8-3.03 Declaration of Intent

- A. The purpose of the Declaration of Intent is to verify that the proposed activity is exempt.
- B. A person seeking an exemption under Section 8-3.02.C,D, H, J and K, shall file a Declaration of Intent with the Department of Planning and Zoning.
- C. The existence of a Declaration of Intent does not preclude:
 - 1. Another exempted activity on the property subject to a Declaration of Intent, if the activity:
 - a. Does not conflict with the purpose of any existing Declaration of Intent, and
 - b. Complies with the applicable requirements for an exempted activity;
 - 2. A regulated activity on the area of the property not covered under the Declaration of Intent.
- D. A person(s) failing to file a Declaration of Intent or found in noncompliance with a Declaration of Intent shall be required to:
 - 1. Meet the requirements for a regulated activity;
 - 2. Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the Declaration of Intent or without authorization;
 - 3. Be subject to other enforcement actions appropriate under the Maryland Forest Conservation Act and this Ordinance; and
 - 4. File or refile a Declaration of Intent with the Department of Planning and Zoning if no regulated activity is being proposed.
- E. The Declaration of Intent is effective for five years after the date of the signature on the Declaration of Intent.
- F. If a regulated activity is proposed within five years of the date of the Declaration of Intent, then the area cleared under the Declaration of Intent shall be considered forest for calculation purposes.

8-3.04 Administration

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A. Application

Except as provided in Section 8-3.02, this Ordinance applies to:

- 1. A person making application for a subdivision, site plan, project plan, grading, sediment control or vegetation removal approval on units of land 40,000 square feet or greater.
- 2. A public utility not exempt under Section 8-3.02.
- 3. A unit of County government including a public utility or public works project, making application for a subdivision, site plan, project plan, grading, sediment control or vegetation removal approval on units of land 40,000 square feet or greater.

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B. General Requirements

An owner or an owner's agent making application for subdivision, site plan, or local agency project plan approval, or making application for a grading vegetation removal, or a sediment control permit shall comply with the following requirements:

1. A Forest Stand Delineation and a Forest Conservation Plan for the lot or parcel on which the development is located shall be submitted to the Department of Planning and Zoning; and
2. Methods provided in the Maryland Forest Conservation Technical Manual to protect retained forests and trees during construction shall be used; and
3. If a person or local agency using State funds makes application to conduct a regulated activity, the State determines whether the State Forest Conservation Program applies.
4. The requirements of the Forest Conservation Program shall be met for the total subdivision and open space created or for each lot separately.
5. If the applicant proposes to meet the forest conservation requirements on other than a lot-by-lot basis then the location and area (square feet) cleared on the lots and location and area (square feet) of any designated retention area on the lots shall be recorded with the lots. A note shall also be recorded with the residue charging the residue with the area cleared on the lots and crediting the residue with the forest area (square feet) retained.
6. Retention, afforestation and reforestation areas on the lots shall be identified on the final subdivision plat as forested areas that will be left undisturbed in perpetuity and to serve for water quality benefits.

C. Forest Stand Delineation

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1. A Forest Stand Delineation shall be submitted to the Department of Planning and Zoning at the initial stages of subdivision, site plan, or project plan approval, before a grading permit application, a vegetation removal permit, or before a sediment control application is submitted for the tract being developed.
2. The delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in Section 8-3.04.T of this Ordinance.
3. The delineation shall be used during the review process to determine the most suitable and practical areas for forest conservation.
4. A concept plan (survey not required) of the subdivision must be submitted which shows the potential location and area of the open space, lots, roads, and forest retention areas.
5. Standard Forest Stand Delineation shall contain the following components:
 - a. A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;

- b. A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15 percent or more;
 - c. Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;
 - d. Location of 100-year floodplains;
 - e. Rare, threatened and endangered species and their habitat as identified by the Department of Natural Resources;
 - f. Non-tidal wetlands and their buffers; and
 - g. Other Priority Retention Areas (as specified in Section 8-3.04.H); and
 - h. Other information the Department of Planning and Zoning determines is necessary to implement this Ordinance.
6. Simplified Forest Stand Delineation shall contain the following components:
- a. A map showing the existing forest cover, designated rare, threatened, and endangered species habitat, trees associated with designated historic structures, champion trees as verified by field inspection by the preparer; and
 - b. Data on the area of forest on the site, total area of the parcel or lot and the information required by Sections 8-3.04.C.5.a, b, d, e, f and g.
7. Simplified Forest Stand delineations are permitted in the following situations:
- a. For minor subdivisions in which no priority retention areas (as specified in Section 8-3.04 H) are disturbed except for a single unavoidable crossing.
 - b. For County roads concurrent with the road grading plan and Forest Conservation Plan submittal.
 - c. For cluster subdivisions that meet all of the following criteria:
 - i. no afforestation or reforestation is necessary,
 - ii. over 50 percent of the parcel is maintained in designated open space,
 - iii. no priority retention areas (as specified in Section 8-3.04 H) are disturbed except for a single unavoidable crossing
 - iv. a minimum of 20 percent of the forest cover onsite is retained.
 - d. For site plans on commercial or industrial zoned land, subject to the following provisions:
 - i. Retention, afforestation and reforestation areas on site plans that include wetlands, wetland buffers, streams, stream buffers, and floodplains shall be noted on the final site plan as forested areas that will be left undisturbed in perpetuity and to serve for water quality benefits. Other retention areas on the

- b. If the Department of Planning and Zoning fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
 - c. The Department of Planning and Zoning may require further information or provide for an additional 15 calendar days under extenuating circumstances.
- D. Forest Conservation Plan
 - 1. Any project for which a Forest Stand Delineation or Simplified Forest Stand Delineation is required must also submit a Forest Conservation Plan.
 - 2. In developing a Forest Conservation Plan, the applicant shall give priority to techniques for retaining existing forest on the site.
 - 3. If existing forest on the site subject to a Forest Conservation Plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department of Planning and Zoning:
 - a. How techniques for forest retention have been exhausted;
 - b. Why the priority forests and priority areas specified in Section 8-3.04.H cannot be left in an undisturbed condition;
 - c. If priority forests and priority areas cannot be left undisturbed, how the afforestation or reforestation will be accomplished onsite.
 - d. Where afforestation or reforestation will occur in priority areas in compliance with the Calvert County Forest Conservation Program.
 - 4. The applicant shall demonstrate to the satisfaction of the Department of Planning and Zoning that the requirements for afforestation or reforestation onsite or off-site cannot be reasonably accomplished, if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.
 - 5. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Natural Resources Article, Sec. 8-1201-1211, Annotated Code of Maryland, and COMAR 08.05.04 is subject to both the nontidal wetlands regulatory requirements and the requirements of this Ordinance is subject to the following requirements:
 - 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 subtitle.
 - b. For the purpose of calculating reforestation mitigation under this Ordinance, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under Federal, State or County regulations shall be shown on the Forest Conservation Plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

- 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.

E. Preliminary Forest Conservation Plan

- 1. A preliminary Forest Conservation Plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Section 8-3.04.T of this Ordinance.
- 2. A preliminary Forest Conservation Plan shall:
 - a. Be submitted with the preliminary plan of subdivision or site plan or proposed project plan;
 - b. Include the approved Forest Stand Delineation or Simplified Forest Stand Delineation for the site;
 - c. Include a table that lists the proposed values of the following, in square feet:
 - i. Net tract area,
 - ii. Area of forest conservation required, and
 - iii. Area of forest conservation that the applicant proposes to provide, including both onsite and off-site areas;
 - d. Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;
 - e. Include an explanation of how the provisions of Section 8-3.04.D of this Ordinance have been met;
 - f. In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;
 - g. Include a proposed construction timetable showing the sequence of forest conservation procedures;
 - h. Show the proposed limits of disturbance;
 - i. Show proposed stockpile areas;
 - j. Incorporate a proposed two-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment; and
 - k. Information required in the Maryland Forest Conservation Technical Manual.

F. Final Forest Conservation Plan.

1. A final Forest Conservation Plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Section 8-3.04.T of this Ordinance.
2. A final Forest Conservation Plan shall:
 - a. Be submitted with the following:
 - i. A final subdivision plan or site plan,
 - ii. A final project plan,
 - iii. An application for a grading permit, or
 - iv. An application for a vegetation removal permit, or
 - v. An application for a sediment control permit;
 - b. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - c. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 - d. Incorporate a binding two-year maintenance agreement specified in Section 8-3.04.Q of this Ordinance that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - i. Watering, and
 - ii. A reinforcement planting provision if survival rates fall below required standards, as provided in the Maryland Forest Conservation Technical Manual;
 - e. Include recorded plats that serve as long-term binding protective agreements.
 - f. Include the elements required under Sections 8-3.04.E.2. d and g-i of this Ordinance, as finalized elements of the Forest Conservation Plan.
3. Time for submittal
 - a. Within 60 calendar days after receipt of the final Forest Conservation Plan, the Department of Planning and Zoning shall notify the applicant whether the Forest Conservation Plan is complete and approved.
 - b. If the Department of Planning and Zoning fails to notify the applicant within 60 calendar days, the plan shall be treated as complete and approved.
 - c. The Department of Planning and Zoning may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.

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- d. At the request of the applicant, the Department of Planning and Zoning may extend the deadline under extenuating circumstances.
 - 4. The Department of Planning and Zoning's review of a final Forest Conservation Plan shall be concurrent with the review of the final subdivision, site plan, or project plan, grading permit application, vegetation removal permit application, or sediment control application associated with the project.
 - 5. The Department of Planning and Zoning may revoke an approved Forest Conservation Plan 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; or
 - c. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.
 - 6. A person who fails to comply with an approved Forest Conservation Plan or maintenance agreement is in violation of the Ordinance.

G. Afforestation Requirement.

(05/04/10) A person making application for subdivision, site plan, or project plan approval, a grading permit, vegetation removal permit application, or a sediment control permit, unless exempt under Section 8-3.02 of this Ordinance, shall:

- 1. Conduct afforestation on the lot or parcel in accordance with Table 8-3.04.G.1.

A tract having less than the appropriate afforestation threshold of the net tract area in forest cover shall be afforested up to at least the afforestation threshold of the net tract area.

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<u>Table 8-3.04.G.1 Afforestation Thresholds</u>	
<u>Zoning District</u>	<u>Afforestation Threshold</u>
Farm & Forest District, Rural Community District and Wetlands	20 percent
Institutional in Farm & Forest District or Rural Community District	15 percent
Residential District	15 percent
Town Center and Employment Center Districts	15 percent
Rural Commercial, Marine Commercial, and I-1 Light Industrial Districts	15 percent

2. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Table 8-3.04.G.1:
 - a. The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
 - b. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a two-to-one (2:1) ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

H. Retention Requirement

1. Priority Retention Areas

The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department of Planning and Zoning that reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

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- a. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes of any size that are adjacent to wetlands, streams and waterways and other steep slopes that form a contiguous area greater than 5,000 square feet, nontidal wetlands and their buffers, and habitats for rare, threatened, and endangered species;
- b. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;
- c. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - i. The federal Endangered Species Act of 1973 in 16 U.S.C. §§1531--1544 and in 50 CFR Part 17,
 - ii. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01--10-2A-09, Annotated Code of Maryland, and
 - iii. COMAR 08.03.08;
- d. Trees that:
 - i. Are part of a designated historic site,
 - ii. Are associated with a designated historic structure, or
 - iii. Have been designated by the State or the County as a national, State, or County champion tree; and
- e. Any tree having a diameter measured at four-and-a-half feet above the ground of:
 - i. 30 inches or more; or

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- ii. 75 percent or more of the diameter, measured at four-and-a-half feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources and as determined in a standard Forest Stand Delineation.

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2. Location of Forest Retention Areas

All retention areas located on land zoned Farm & Forest District or Rural Community District and that are part of a clustered subdivision shall be placed outside of the lot areas. In all other instances, when the FRAs are allowed and proposed within the lot lines, the FRAs shall be contiguous with FRAs on other lots or open space. If the entire FRA is located on one lot, it shall be in large contiguous blocks. The Building Restriction Lines shall be 10 feet from the FRAs.

- a. The area is not behind the rear BRL but is a priority area for retention as designated in Section 8-3.04.H.1.a, c-e, or
- b. The area is part of a required buffer from adjacent properties and rights-of-way and is greater than 75 feet in width.

I. Reforestation - Forest Conservation Threshold

- 1. There is a forest conservation threshold established for all zoning districts, as provided in Table 8-3.04.I.2. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of one-quarter-acre planted for each acre removed above the threshold to a ratio of two acres planted for each acre removed below the threshold.
- 2. After exhausting efforts to minimize the cutting or clearing of trees and other woody plants in the development of a subdivision, site plan, or project plan, grading and sediment control activities, and implementation of the Forest Conservation Plan, the Forest Conservation Plan shall provide for reforestation, or payment into the forest conservation fund, according to the formula set forth in Sections 8-3.04.I.2&3 and consistent with Section 8-3.04.D and 8-3.04.J of this Ordinance and the following forest conservation thresholds for the applicable zoning districts:

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Table 8-3.04.I.2 Conservation Thresholds	
<u>Zoning District</u>	<u>Conservation Threshold</u>
Farm & Forest District and Wetlands District	50 percent
Rural Community District	30 percent
Institutional in Farm & Forest District & Rural Community District	20 percent
Residential District	20 percent
Town Center and Employment Center Districts	15 percent
Rural Commercial, Marine Commercial, and I-1 Light Industrial Districts	15 percent

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3. Calculations

- a. For all existing forest cover on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of one-quarter acre planted for each acre removed.
- b. Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested. The calculation of the credit shall be according to the criteria provided in the Maryland Forest Conservation Technical Manual.
- c. For all existing forest cover on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold and at a ratio of one-quarter acre planted for each acre removed above the threshold.

J. Priorities, and Sequence for Mitigation

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1. After techniques for retaining existing forest on the site have been exhausted, the prescribed sequence for afforestation and reforestation, is as follows:
 - a. Selective clearing and supplemental planting on site and managed natural regeneration per an approved Forest Management Plan;
 - b. Onsite afforestation or reforestation, if economically feasible, using transplanted or nursery stock that is greater than one-and-a-half inches diameter measured at four-and-a-half feet above the ground;
 - c. Onsite afforestation or reforestation, using whip and seedling stock;
 - d. Off-site afforestation or reforestation, using transplanted or nursery stock that is greater than one-and-a-half inches diameter measured at four-and-a-half feet above the ground;
 - e. Off-site afforestation or reforestation, using whip and seedling stock;
 - f. Purchase of Forest Conservation Transferable Development Rights (See Section 8-3.04.K);
 - g. Natural regeneration of native vegetation off-site or on-site with competitive and invasive species control for at least two years, predation control if necessary, a five-year maintenance agreement, and a final tree density of at least 100 seedlings, saplings and/or trees per acre; and
 - h. The placement of Forest Conservation Easements on forested land at least one acre in size. Two acres of forest must be preserved in this way for each acre of mitigation (rounded up to the nearest whole number) required. These easements must be perpetual and recorded in the Calvert County Land Records.

- i. Landscaping of on-site commercial areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area.
 - j. Payment into the Forest Conservation Fees-in-lieu Fund in accordance with Section 8-3.04.L. If the mitigation required is less than or equal to 5,000 sq. ft., fees-in-lieu may be used as the sole mitigation method.
2. A mitigation sequence other than the one described in Section 8-3.04.J.1 of this Ordinance may be used for a specific project, if approved by County Environmental Planning staff and if necessary to achieve the objectives of the County Comprehensive Plan or County land use policies, to take advantage of opportunities to consolidate forest conservation efforts or if it can be supported that a technique at a lower priority level will be as effective as use of a higher priority level technique. Written justification must be submitted in support of use of a lower priority and such discussion must address why the higher priority options were not selected.
3. The following are considered a priority for afforestation and reforestation:
 - a. Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
 - b. Establish or enhance non-forested areas on 100-year floodplains, when appropriate;
 - c. 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;
 - d. Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - e. Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
 - f. Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
 - g. Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
 - h. Use native plant materials for afforestation or reforestation.
4. A person required to conduct afforestation or reforestation under this article shall accomplish it within one year or two growing seasons, whichever is a greater time period, following development project completion.
5. Mitigation banking of forest will be allowed and used under the following provisions:

- a. An application to propose a site for forest mitigation must be submitted to the Department of Planning and Zoning which includes a survey of the area to be forested, the total acres to be reforested, the tax identification number of the parcel, the tax map, parcel and lot number, and the method of reforestation proposed. A replanting plan must be submitted by an approved qualified professional as described in Section 8-3.04.T.
- b. The area of reforestation must be one acre or greater or greater than one-half acre if it meets the criteria given in Section 8-3.04.J.3.a, b, d, or e.
- c. An inspection will be made of the site by the Department of Planning and Zoning to confirm that the proposed area is not currently in forest and that the proposed method of reforestation is appropriate. The Department of Planning and Zoning may consult with the department of natural resources concerning the proposed reforestation.
- d. A current list of proposed mitigation banking sites will be kept in the Department of Planning and Zoning.
- e. For a development to use a mitigation site to meet its reforestation requirement, the mitigation site must have a higher priority rating for reforestation as given in Section 8-3.04.J.3 than possible on-site reforestation sites and must fit within the prescribed sequence for reforestation given in Section 8-3.04.J.1.
- f. In order for a proposed mitigation site to be used to meet any reforestation requirement, the mitigation site must meet the definition of reforestation.
- g. Prior to approval of any development plan that uses a mitigation banking site to meet its reforestation requirements, a note must be recorded in the land records for the parcel on which the mitigation forest has been established indicating that the entire proposed reforestation area will remain in forest in perpetuity. Forest harvest within these areas will be allowed.
- h. Once a portion of the mitigation area is used to meet a reforestation requirement the rest of the mitigation area can not be withdrawn from being a mitigation site. Prior to the mitigation site being recorded as a permanent forest retention area, the proposed mitigation site may be withdrawn by written request to the Department of Planning and Zoning. Mitigation sites thus withdrawn will be considered forested relative to future development.
- i. A note will be recorded on the record plat of any subdivision that uses a mitigation banking site to meet its reforestation requirements indicating the tax map, parcel, and lot number and tax identification number of the property supplying the mitigation and the area of the mitigation credited to the project. The Department of Planning and Zoning will also keep a record of the transaction.

K. Purchase of Forest Conservation Transferable Development Rights (FCTDRs). FCTDRs pertain to a portion of an APD that is forested.

1. If afforestation and reforestation are not feasible on a developing property, FCTDRs may be purchased at a rate of two times the acreage of afforestation or reforestation required, rounded up to the nearest whole number.
2. FCTDRs may be purchased from a County APD with existing forestland to be retained as forestland in perpetuity. This land shall be designated as Forest Retention Area.
3. A plat must be recorded in the land records outlining the location where the Forest Retention Area is located on the APD.
4. Covenants for the APD shall indicate that development activities including building, grading and road or utility line siting and construction are not allowed within the designated Forest Retention Area and that timber harvests and tree clearing within the designated Forest Retention Areas are only allowed with an approved Forest Management Plan.

L. Fees-In-Lieu of Afforestation and Reforestation – Calvert County Forest Conservation Fund.

1. A Calvert County Forest Conservation Fund is established to receive fees-in-lieu funds and fines and will be administered through the Department of Planning and Zoning.
2. If a person subject to this Ordinance demonstrates in writing to the satisfaction of the Department of Planning and Zoning that requirements for reforestation or afforestation onsite or off-site cannot be reasonably accomplished, and that FCTDRs are not available for purchase, the person shall pay, at a rate established by resolution by the Board of County Commissioners, into the County Forest Conservation Fund.

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3. Money paid in-lieu-of afforestation or reforestation under this article shall be paid prior to receiving any permits.
4. The Department of Planning and Zoning shall accomplish the reforestation or afforestation for which the money is deposited.

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5. Money contributed to this fund will be used exclusively for replanting programs or the purchase of Forestry TDRs.
6. Money deposited in the County forest conservation fees-in-lieu fund under this Section:

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- a. May be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, purchase of permanent easements, preparation for plantings, planting bid package preparation, and supervision of plantings;
- b. Shall be deposited in a separate forest conservation fund;
- c. May not revert to the general fund.

- 7. Sites for Afforestation or Reforestation Using Fund Money.
 - (05/04/10) a. Except as provided in Section 8-3.04.L.7.b, the reforestation or afforestation requirement shall occur in the County and within the watershed in which the project is located.
 - b. If the reforestation or afforestation cannot be reasonably accomplished in the watershed in which the project is located, then the reforestation or afforestation shall occur in another watershed within the County in which the project is located.

- M. Recommended Tree Species

Tree species used for afforestation or reforestation shall be native species and selected from a list of approved species maintained in the Department of Planning and Zoning.

- N. A person required to conduct afforestation or reforestation shall include a bond or other financial security as an element of a forest conservation plan. This Section does not apply to agencies of any Federal, State, County or Municipal government.
 - 1. Requirements
 - a. A financial security shall be furnished in the form of a surety bond, an irrevocable letter of credit, cash bond, certificate of guarantee, or other surety as authorized from time to time by the Board of County Commissioners and approved by the Office of the County Attorney. The surety shall:
 - i. Name the Board of County Commissioners as obligee;
 - ii. Assure that the mitigation replanting is conducted in accordance with the approved mitigation plan;
 - (05/04/10) iii. Be in an amount equal to 1.00 times the cost as approved by the Department of Planning and Zoning of performing the mitigation plus a review and inspection fee, as set by the County Commissioners, will be submitted with the bond to cover the costs of inspections and handling of the bond. This fee will not be reimbursed, but placed in the Planning and Zoning Environmental Review Fund.
 - (05/04/10) iv. Remain in force until all requirements of the mitigation plan including maintenance and monitoring have been fulfilled to the satisfaction of the Department of Planning and Zoning.
 - b. The surety may not be cancelled by the issuing entity unless both of the following requirements are fulfilled:
 - i. The issuer notifies the Board of County Commissioners and the principal of its intention to cancel the surety, in writing, by registered mail, not less than 90 days before cancellation; and
 - ii. At least 45 days before the cancellation date indicated in the notice, the principal files a commitment from another entity to provide a substitute surety that will be effective on the cancellation date indicated in the notice.

2. Forfeiture of Surety.

- a. The surety shall be subject to forfeiture if the principal fails to comply with the Forest Conservation Plan or the Maintenance Agreement.
- b. Before forfeiture of the surety, the Board of County Commissioners shall notify the principal and the issuer, by certified mail, of the failure of the principal to comply with the Forest Conservation Plan or the Maintenance Agreement, and shall give the principal 30 days to come into compliance.
- c. If a person fails to come into compliance within the 30-day period, the surety shall be forfeited and the County and its agents shall be allowed access to the property to accomplish the previously bonded planting.

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3. Release of Surety.

- a. If, after two growing seasons, the survival of plantings associated with the Forest Conservation Plan or Maintenance Agreement meets or exceeds the standards of the Plan or Agreement, the amount of the surety shall be released.
- b. If, after two growing seasons, the survival of the plantings associated with the Forest Conservation Plan or Maintenance Agreement is less than the standards of the Plan or Agreement, the surety shall be reduced by a percentage equal to the percentage of plantings that have survived and that portion of the surety shall be released. An additional review and inspection fee as set by the County Commissioners will be submitted prior to partial release of the surety to cover the costs of additional inspections and handling of the remaining bond. This fee will not be reimbursed, but placed in the Planning and Zoning Environmental Review Fund.

O. Standards for Protecting Trees from Construction Activities

- 1. The standards for the protection of trees from construction activity are given in the Maryland Forest Conservation Technical Manual.
- 2. Before cutting, clearing, grading, or construction begins on a site for which a Forest Conservation Plan is required by this article, the applicant shall demonstrate to the Department of Planning and Zoning that protective devices have been established.

P. Penalties and Enforcement

1. Noncompliance Fees

- a. A person found to be in noncompliance with Section 8-3 of this Ordinance, the Forest Conservation Plan, or the associated two-year Maintenance Agreement, shall be assessed by the Department of Planning and Zoning the penalty of 30 cents per square foot of the area found to be in noncompliance with required forest conservation.

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- b. Money collected under Section 8-3.04.P.1.a of this Ordinance shall be deposited in the Calvert County Forest Conservation Fund, and may be used by the County for purposes related to implementing this Ordinance.

2. Violation

- a. In addition to the provisions under Section 8-3.04.P.1 of this Ordinance, a person who violates a provision of this Ordinance or a regulation or order adopted or issued under this Ordinance is liable for a penalty not to exceed \$1,000, which may be recovered in a civil action brought by the Department of Planning and Zoning.
- b. Each day a violation continues is a separate violation.

3. The Department of Planning and Zoning may seek an injunction requiring the person to cease violation of this Ordinance and take corrective action to restore or reforest an area.

4. Complaints and Orders

- a. The Department of Planning and Zoning may serve a written complaint to an alleged violator if the Department of Planning and Zoning determines that there has been a violation of:
 - i. A provision of the Forest Conservation Act;
 - ii. A regulation of the Calvert County Forest Conservation Program;
 - iii. A Forest Stand Delineation or Forest Conservation Plan; or
 - iv. An administrative order.
- b. The complaint shall:
 - i. Identify the violator and the location of the violation;
 - ii. State the provision violated;
 - iii. State the specific facts on which the complaint is based; and
- c. Corrective Action
 - i. At any time, including during an enforcement action, the Department of Planning and Zoning may issue an administrative order requiring the violator to take corrective action within a certain time period.
 - ii. The corrective action may include an order to:
 - (a) Stop the violation;
 - (b) Stabilize the site;
 - (c) Stop all construction work at the site of a regulated activity;
 - (d) Restore, replant and mitigate unlawfully cleared areas as described in Section 8-2.08.B&C; and/or

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- (e) Submit a written report and restoration plan concerning the violation to the Department of Planning and Zoning for review and approval.
- d. Service
 - i. A complaint, order, or other administrative notice issued by the Department of Planning and Zoning shall be served in a manner as described in Section 1-7.
 - ii. An order issued under this regulation is effective immediately, according to its terms, when it is served.
- 5. Grading Permit Suspension and Revocation.

The Department of Planning and Zoning may suspend or revoke a grading permit after notice to the violator if the Department of Planning and Zoning determines that one or more of the following has occurred:

 - a. Failure of a violator to post a bond required under Section 8-3.04.N;
 - b. Failure to comply with the requirements of an administrative action or order issued under the Calvert County Forest Conservation Program, or for a violation of the Maryland Forest Conservation Act;
 - c. Misrepresentation in the application process or failure to disclose a relevant or material fact;
 - d. Violation of a Forest Conservation Plan requirement;
 - e. Substantial deviation from the conditions, specifications, or requirements of a plan;
- 6. Notice

Except as provided under Section 8-3.04.P.8 of this Ordinance, the Department of Planning and Zoning may not suspend or revoke a Forest Conservation Plan unless the Department of Planning and Zoning first gives the violator written notice by certified mail of the specific facts that warrant suspension or revocation.
- 7. Contested Case Hearings
 - a. On receipt of written notice to suspend or revoke a Forest Conservation Plan, the violator has 10 calendar days to request a contested case hearing;
 - b. A hearing under this regulation shall be conducted in conformance with State Government Article, §§10-201--10-217, Annotated Code of Maryland.
 - c. If the Department of Planning and Zoning does not receive a request for a hearing, the Forest Conservation Plan shall be suspended or revoked.

8. Emergency Action

- a. The Department of Planning and Zoning may order the immediate suspension of a Forest Conservation Plan if the Department of Planning and Zoning finds that the public health, safety, or welfare imperatively requires the emergency suspension.
- b. Within two business days, the Department of Planning and Zoning shall give the violator written notice that the emergency action has been taken.
- c. A notice of emergency action shall include a statement of specific facts on which the emergency suspension is based.

Q. Forest Conservation Maintenance Agreements - Short Term Protective Agreements

1. Maintenance Agreements

- a. Application. A person required to conduct afforestation or reforestation under Section 8-3 shall include in the Forest Conservation Plan a binding maintenance agreement for the length of two years.
- b. Approval procedures and timing shall be consistent with the procedures provided in Section 8-3.04.E of this Ordinance.
- c. The Maintenance Agreement shall detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in the Maryland Forest Conservation Technical Manual.
- d. The person required to conduct the afforestation or reforestation, hereinafter referred to as the "principal", shall present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:
 - i. An executed deed conveying title to a selected site to the principal;
 - ii. An executed conservation easement agreement;
 - iii. Written evidence of the landowner's consent to the use of a selected site;
 - iv. A fully executed option agreement, long-term lease agreement, or contract of sale for a selected site; or
 - v. Other written evidence of a possessory or ownership interest in a selected site.
- e. The Department of Planning and Zoning shall be a signatory to the maintenance agreement, or shall be designated a third-party beneficiary of the agreement.
- f. The Department of Planning and Zoning may not release a bond or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.

- g. The maintenance agreement shall provide for access by the Department of Planning and Zoning to the afforestation or reforestation site.
- h. Performance of the Maintenance Agreement shall be bonded in accordance with Section 8-3.04.N of this Zoning Ordinance.

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R. Forest Conservation Maintenance and Management Agreements - Long-Term Protective Agreements

- 1. An applicant under the State or County Forest Conservation Program shall have in effect at all times a long-term protective agreement to preserve and protect areas retained in FRA, including afforested, or reforested and forested landscaped areas.
- 2. FRAs shall be located on a plat by a surveyor or engineer licensed in the State of Maryland and recorded in the Calvert County Land Records with notes that will maintain the area in forest in perpetuity and, when they exist, with associated conservation easements and Forest Conservation Management Agreements.

S. Procedure for a Timber Harvesting Plan

- 1. Timber may be harvested on forested, reforested, or afforested areas protected under an approved Forest Conservation Plan provided that the harvest:

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- a. Is consistent with the intent of an approved Forest Management Plan (see Section 8-3.04.T.1 and 2) and terms of the recorded forest retention area,
- b. Is subject to a Timber Harvest Plan:
 - i. Prepared by a licensed professional forester,
 - ii. Submitted to the local Forest Conservancy District Board for review and approval, and
 - iii. That remains in effect for two years; and
- c. Is consistent with the intent and requirements of the approved Forest Conservation Plan.

- 2. The local Forest Conservancy District Board shall notify the owner or owner's agent whether the Timber Harvest Plan has been approved.

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T. Forest Management Plans

- 1. Approved Forest Management Plan

- a. Procedure for Approval

An application for approval of a Forest management Plan shall include all information required in the Maryland Forest Conservation Technical Manual.

- b. The Forest management Plan shall be:

- i. Legally binding from the date of approval;
- ii. Prepared by a licensed professional forester;

- iii. Submitted to the DNR forester assigned to the County where the property is located; and
 - iv. May be amended periodically.
 - c. The DNR forester shall review the plan to ensure that it is complete and consistent with Section 8-3 of this Ordinance.
 - d. DNR shall notify the applicant and the Department of Planning and Zoning as to whether the Forest Management Plan has been approved.
 - 2. Procedure for Amendment of an Approved Forest Management Plan
 - a. An approved Forest Management Plan may be amended if there is a change in site conditions or landowner objectives;
 - b. Amendments shall be prepared by a licensed professional forester;
 - c. The amendment shall be submitted to the DNR forester assigned to the County where the property is located;
 - d. The DNR forester shall review the amendment to ensure that it is complete and consistent with Section 8-3 of this Ordinance.
 - e. Once the amendment has been approved by DNR, the applicant shall sign the amendment.
- U. Approved Qualified Professional
 - 1. A person may prepare a Forest Stand Delineation or a Forest Conservation Plan, if the person:
 - a. Is a licensed forester;
 - b. Is a licensed landscape architect; or
 - c. Is certified by the State as a Qualified Professional relative to the preparation of Forest Stand Delineations and Forest Conservation Plans.

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