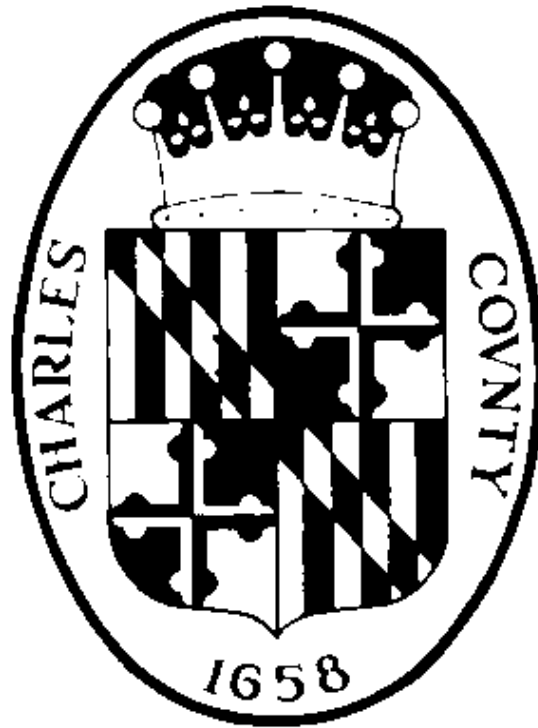


CHARLES COUNTY, MARYLAND

FOREST CONSERVATION  
ORDINANCE



Prepared by:

PLANNING DIVISION  
DEPARTMENT OF PLANNING & GROWTH MANAGEMENT

REPEALED AND REENACTED W/ AMENDMENTS JULY 13, 2004  
EFFECTIVE DATE AUGUST 27, 2004

Adoption date: January 1, 1993 (Ordinance: 92-92)  
Amended: August 30, 1994 (Ordinance: 94-52)  
Amended: May 5, 1997 (Ordinance: 96-91)

## County Commissioners of Charles County

Murray D. Levy, President

Robert J. Fuller

Wm. Daniel Mayer

Wayne Cooper

Allan R. Smith

### Mission Statement

The mission of Charles County Government is to provide our citizens the highest quality service possible in a timely, efficient, and courteous manner. To achieve this goal Government must be operated in an open and accessible atmosphere, be based on comprehensive long and short term planning, have an appropriate managerial organization tempered by fiscal responsibility.

### Vision Statement

Charles County Is a Place Where...

- Private initiative is rewarded and businesses grow and prosper, while the preservation of heritage is paramount,
- Government services have reached the highest level of excellence, and
- The quality of life is felt by its citizens to be the best in the region and its Government is recognized as a leader in support of these expectations.

Say No to Drugs  
Equal Opportunity Employer

Charles County Government  
Planning and Growth  
Management

Roy E. Hancock, Director of Planning and Growth Management

Dave Umling, Director of Planning

Zakary Krebeck, Current Planning Senior Planner

Mission Statement

To provide the citizens of Charles County an effective and economical infrastructure through planning, design and construction of facilities, roadways, water and waste systems as described in the County's Master Plan. This shall be accomplished in a timely, efficient and courteous manner with dedication and quality service in cooperation with various Departments within Charles County Government.

Building for the future in cooperation  
with the citizens and the  
environment

FOREST CONSERVATION ORDINANCE  
Table of Contents

		Page
ARTICLE I	Purpose . . . . .	1
	-1 Purpose . . . . .	1
ARTICLE II	Forest and Tree Conservation Definitions . . . . .	1
	-2 Definitions . . . . .	1
ARTICLE III	Application . . . . .	9
	-3 Application . . . . .	9
	-4 Exemptions . . . . .	9
	-5 Declaration of Intent . . . . .	13
ARTICLE IV	General Requirements . . . . .	14
	-6 General Requirements . . . . .	14
	-7 Applicant Using State Funds . . . . .	15
ARTICLE V	Forest Stand Delineation . . . . .	16
	-8 Criteria . . . . .	16
ARTICLE VI	Forest Conservation Plan . . . . .	18
	-9 General Provisions . . . . .	18
	-10 Preliminary Forest Conservation Plan . . . . .	19
	-11 The Final Forest Conservation Plan . . . . .	20
ARTICLE VII	Afforestation and Retention . . . . .	23
	-12 Afforestation Requirement . . . . .	23
	-13 Retention . . . . .	23
ARTICLE VIII	Reforestation . . . . .	24
	-14 Forest Conservation Threshold . . . . .	24
ARTICLE IX	Requirements for Afforestation, Reforestation and Forest Retention . . . . .	26
	-15 Sequence for Onsite and Offsite Afforestation and Reforestation . . . . .	26
	-16 Submission Requirements for Offsite Approval . . . . .	28
ARTICLE X	Forest Conservation Maintenance and Long Term Protection . . . . .	29
	-17 Binding Protective Agreements . . . . .	29
ARTICLE XI	Payment Instead of Afforestation and Reforestation . . . . .	29
	-18 Forest Conservation Fund . . . . .	29
ARTICLE XII	Recommended Tree Species List . . . . .	30
	-19 Recommended Trees Species List . . . . .	30
ARTICLE XIII	Financial Security for Afforestation and Reforestation . . . . .	30
	-20 Bonding . . . . .	30
ARTICLE XIV	Revisions to Approved Plans . . . . .	31
	-21 Changes to an Approved Forest Stand Delineation . . . . .	31
	-22 Changes to an Approved Final Forest Conservation Plan . . . . .	31
ARTICLE XV	Standards for Protecting Trees from Construction Activity . . . . .	32
	-23 Protection Devices . . . . .	32

ARTICLE XVI	Variances .....	32
	-24 Procedure .....	32
ARTICLE XVII	Penalties .....	33
	-25 Enforcement .....	33
ARTICLE XVIII	Annual Report .....	34
	-26 Report .....	34
ARTICLE XIX	Biennial Review by the Maryland Department of Natural Resources .....	34
	-27 Required Documentation .....	34
ARTICLE XX	Severability .....	35
	-28 Severability .....	35
ARTICLE XXI	Amendments .....	35
	-29 Amendments .....	35
ARTICLE XXII	Effective Date .....	35
	-30 Effective Date .....	35
	-31 Transition Provisions .....	35

## FOREST CONSERVATION

### Article I Purpose

#### 298-1 Purpose

To establish a Charles County Forest Conservation Program pursuant to the requirements of Natural Resources Article, §§5-1601--5-1612, Annotated Code of Maryland.

### Article II Forest and Tree Conservation Definitions

#### 298-2 Definitions

In this Ordinance the following terms have the meanings indicated. Any term not defined in this Ordinance shall have the meaning as defined in the Charles County Zoning Ordinance.

*Afforestation* means:

- A. Establishment of a forest on an area from which forest cover has been absent for a long period of time;
- B. Planting of open areas which are not presently in forest cover; or
- C. Establishment of a forest according to afforestation or reforestation standards as provided in the Maryland Forest Conservation Technical Manual.

*Agricultural activity* means farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.

*Agricultural and resource areas* means undeveloped areas zoned for densities of less than or equal to one dwelling unit per five (5) acres and corresponds to the Charles County Zoning Classification: Rural Conservation Deferred Development District.

*Applicant* means a person who is applying for approval of a subdivision plan, site plan, County project, or a grading permit or sediment control approval, or who is seeking or who has received approval of a forest stand delineation or forest conservation plan.

*Approved forest management plan* means a document:

- A. Approved by the Department of Natural Resources forester assigned to the county in which the property is located; and
- B. Which operates as a protective agreement for forest conservation as described in the Natural Resources Article, §5-1607(e)-(f), Annotated Code of Maryland.

*Caliper* means the diameter of a tree measured at 6 inches above the root collar.

*Champion tree* and *Champion tree of the State* means a tree which appears in the State Forest Conservation Manual list of State champion trees, as may be amended.

*Chesapeake Bay Critical Area* means lands governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, Sections 8-1801-8-1816 Annotated Code of Maryland.

*Commercial and industrial areas* means lands zoned for manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding, and parking areas, as may be permitted in the following commercial and industrial zones established in the Charles County Zoning Ordinance: Village Commercial, Neighborhood Commercial, Community Commercial, Central Business, Business Park, General Industrial, and Heavy Industrial.

*Commercial logging or timber harvesting operations* means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

*County project* means a construction, grading, or sediment and erosion control activity on an area 40,000 square feet or greater by a County agency.

*Critical habitat area* means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area is an area determined by official or State regulations or guidelines to:

- A. Be likely to contribute to the long-term survival of the species;
- B. Be likely to be occupied by the species for the foreseeable future; and
- C. Constitute habitat of the species which is considered critical under Natural Resources Article, §§4-2A-04 and 10-2A-06, Annotated Code of Maryland.

*Critical habitat for endangered species* means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, §§4-2A-04 and 10-2A-04, Annotated Code of Maryland.

*Declaration of intent* means:

- A. A signed statement by a landowner or the landowner's agent certifying that the activity on the landowner's property:
  - (1) Is for certain activities exempted under this Ordinance or Natural Resources Article, §§5-103 and 5-1601--5-1612, Annotated Code of Maryland;
  - (2) Does not circumvent the requirements of this Ordinance or Natural Resources Article, §§5-103 and 5-1601--5-1612, Annotated Code of Maryland; and
  - (3) Does not conflict with the purposes of any other declaration of intent;  
or
- B. The document required under COMAR 08.19.01.05 or this Ordinance.

*Department* means the Charles County Planning Division.

*Development District* means the area designated as development district in the Charles county comprehensive plan.

*Development Project.*

- A. *Development project* means the grading or construction activities occurring on a specific tract that is 40,000 square feet or greater in area.
- B. *Development project* includes redevelopment or expansion of existing development by more than 20% or 10,000 square feet, whichever is less.

*Development project completion* means for the purposes of afforestation, reforestation, or payment into a fund:

- A. The release of the development bond, if required;
- B. Acceptance of the project's streets, utilities, and public services by the Department; or
- C. Designation by the Department or State that a:
  - (1) Development project has been completed, or
  - (2) Particular stage of a staged development project, including a planned unit development, has been completed.

*Forest*

- A. *Forest* means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.
- B. *Forest* includes:
  - (1) Areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger; and
  - (2) Areas that have been cut but not cleared.
  - (3) Minimum 35' width requirement
- C. *Forest* does not include orchards. For the purposes of this definition, an orchard is a group of trees cultivated for fruit or nut production.

*Forest Conservancy District Board* means the Charles County Forest Conservancy District Board created under Natural Resources Article, §§5-601--5-601, Annotated Code of Maryland.

*Forest Conservation* means the retention of existing forest or the creation of new forest according to afforestation or reforestation standards as provided in the Maryland Forest Conservation Technical Manual.

*Forest Conservation and Management Agreement* means an agreement as stated in the Tax-Property Article, §8-211, Annotated Code of Maryland.

*Forest Conservation Plan* means a plan approved pursuant to Natural Resources Article, §§5-1606 and 5-1607, Annotated Code of Maryland.

*Forest cover* means the area of a site meeting the definition of forest.

*Forest Management Plan* means a plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

*Forest Management Stream Buffer* means the area within the Resource Protection Zone as defined in the Charles County Zoning Ordinance.

*Forest Stand Delineation* means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Maryland Forest Conservation Technical Manual.

*Growing season* means the period of consecutive frost-free days as stated in the current Charles County Soil Survey, published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)-(f).

*Historic site* means a site listed on the National Register of Historic Places, the Maryland Register of Historic Properties, or a historic preservation easement monitored by the Maryland Historical Trust.

*Historic structure* means a structure listed on the National Register of Historic Places, the Maryland Register of Historic properties, or a historic preservation easement monitored by the Maryland Historical Trust.

*High density residential areas* means land zoned for base densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, and corresponds to the Charles County Zoning Classification(s) of Village Residential, Medium Density Residential, and High Density Residential.

*Institutional development area* means schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries.

*Landscaping plan* means a plan:

- A. Drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 10,000 square feet or greater in size;
- B. Using native or indigenous plants when appropriate; and
- C. Which is made part of an approved Forest Conservation Plan.

*Local agency* means units of Charles County Government.

*Lot* means a unit of land, the boundaries of which have been established by subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by Natural Resources Article §5-1601, Annotated Code of Maryland and this Ordinance, without an approved Forest Stand Delineation and Forest Conservation Plan.

*Maintenance Agreement* means the two-year management agreement associated with afforestation or reforestation plans required under Natural Resources Article, §5-1605, Annotated Code of Maryland and this Ordinance.

*Maryland Forest Conservation Technical Manual* means the technical manual published by the Maryland Department of Natural Resources and hereby incorporated herein by reference,

which is used to establish standards of performance required in preparing Forest Stand Delineations and Forest Conservation Plans.

*Medium density residential areas* means land zoned for base densities greater than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, and corresponds to the Charles County Zoning Classification(s) of Rural Residential, Low Density Residential, Agricultural Conservation, and Rural Conservation.

*Minor development project* means a project on less than 5 acres of land containing not more than four lots per acre.

*Mixed use development* means a development project which includes two or more types of uses or varying intensities of a land use, and corresponds to Charles County Zoning Classification(s) of: Planned Residential Development, Mixed Use Zone; Planned Unit Development, if non-exempt; Waterfront Planned Community Zone; Planned Employment and Industrial Park Zone; Planned Manufactured Home Park Zone; and Residential Office Zone.

*Navigable airspace* means airspace at and above the minimum flight altitudes prescribed by or under 14CFR, Chapter 1 of FAA Regulations, including airspace needed for safe takeoff and landing.

*Natural regeneration* means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

*Net tract area* means:

- A. Except in agriculture and resource areas the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by the area found to be within the boundaries of the 100-year floodplain; and
- B. In agriculture and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain.

*Nontidal Wetlands*:

- A. Means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and
- B. Means an area considered a nontidal wetland in accordance with the publication that contains the most current accepted standards; and

- C. Does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.

*Offsite* means outside of the limits of the area encompassed by the tract.

*Onsite* means within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain.

*100-year flood* means a flood which has a 1 percent chance of being equaled or exceeded in any given year.

*100-year floodplain* means the non-tidal floodplain zone as defined in the Charles County Floodplain Management Ordinance.

*Paved Surface* means any ground surface that satisfies the definition of semi-impervious or impervious surface as defined under Article IX, Overlay Zones, Part 1, Critical Area Zones of the Charles County Zoning Ordinance.

*Person* means the Federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

*Planned Unit Development* means development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by Charles County with at least 20 percent of the land permanently dedicated to open space.

*Priority areas for afforestation and reforestation* means those areas specified in Article IX, Section 15, Paragraph C of this Ordinance which shall be considered a priority for afforestation and reforestation.

*Public utility* means any:

- A. Transmission line or electric generating station; or
- B. Water, sewer, electric, gas, telephone, or television cable service line.

*Reforestation means*

- A. Establishment of a forest on an area where forest cover has been cut or cleared; and
- B. Establishment of a forest according to afforestation and reforestation standards as provided in the Maryland Forest Conservation Technical Manual.

*Regulated activity* means any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

- A. Subdivision,
- B. Grading,
- C. An activity that requires a sediment control approval; or
- D. County project.

*Residue* means any area(s) of a parcel not the subject of a development proposal, but which are associated with the subdivision, and are of sufficient size and configuration to be eligible for additional subdivision into two (2) or more lots in the future, per Section 46(J) of the Charles County Subdivision Regulations.

*Retention* means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the Maryland Forest Conservation Technical Manual.

*Sediment control approval* means the authorization of an activity regulated under a sediment control plan as provided in the Environmental Article, Title 4, Annotated Code of Maryland.

*Seedling* means an unbranched woody plant, less than 24 inches in height and having a diameter of less than ½ inch measured at 2 inches above the root collar.

*Selective clearing* means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved Forest Conservation Plan.

*Specimen tree* means a tree having a diameter measured at 4.5 feet above the ground of 30 inches or more, or trees having 75% or more of the diameter of the current state champion tree of that species.

*Stream* means a perennial or intermittent water course created naturally or artificially which contains flow from surface water and water originating from a groundwater source during a portion of the year, as field verified.

*Subdivision* means any division of a unit of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, development, or redevelopment.

*Timber Harvesting*

- A. *Timber harvesting* means a tree cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000

square feet or more of forest floor; and

- B. *Timber harvesting* does not include grubbing and clearing of root mass.

*Tract* means any parcel of real property or unit of land subject to an application for a grading permit or sediment control approval, subdivision approval, site plan approval, County project approval or other areas of land subject to this subtitle.

*Tract for a planned unit development* means the entire property subject to a planned unit development.

*Tree* means a large, branched woody plant having one or several self-supporting stems or trunks and that reaches a height of twenty feet or more at maturity.

*Variance*

- A. Means relief from Natural Resources Article, §§5-1601--5-1612, Annotated Code of Maryland or this Ordinance; and
- B. Does not mean a zoning variance.

*Watershed* means all land lying within an area described as a subbasin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08.

*Whip* means an unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar.

Article III Application

298-3 Except as provided in Section -4 of this Article, this Ordinance applies to:

- A. A person making application for a subdivision, County project, site plan, grading, or sediment control approval on tracts of land 40,000 square feet or greater after the effective date of this Ordinance.
- B. A public utility not exempt under Section -4 D. and G of this Article.
- C. County government projects on areas 40,000 square feet or greater.

298-4 This Ordinance does not apply to:

- A. Highway construction activities under Natural Resources Article, §5-103, Annotated Code of Maryland.
- B. Areas governed by the Chesapeake Bay Critical Area Protection Law,

Natural Resources Article, §§8-1801-8-1816, Annotated Code of Maryland.

- C. Commercial logging and timber harvesting operations, including harvesting conducted subject to the Forest Conservation and Management Program under the Tax-Property Article, §8-211, Annotated Code of Maryland, that are completed
  - (1) On or after July 1, 1991, and are conducted on property which:
    - (a) Is the subject of a declaration of intent, Forestry Exemption, as provided for in Section 5 of this Article, approved by the Department.
    - (b) Does not become the subject of application for a regulated activity within 5 years after completion of the logging or harvesting operation, and after which time a regulated activity on the property shall be subject to the requirements of the ordinance.
  
- D. Agricultural activities 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 engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a 1-year period, may not receive an agricultural exemption, unless the person files a declaration of intent, Agricultural Activity Exemption, as provided for in Section 5 of this Article, which includes:
  - (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
  - (2) A sketch map or site plan of the property which shows approximate existing forest cover and the forest area to be cleared.
  
- E. The cutting or clearing of public utility rights-of-way licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland or land for electric generating stations licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland, if:
  - (1) Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
  - (2) Cutting or clearing of the forest is conducted to minimize the loss of forest.

- F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under Article 78, §§54A and 54B or §54-I, Annotated Code of Maryland,
- G. Except for a public utility subject to this Article, routine maintenance or emergency repairs of a public utility right-of-way if:
  - (1) The right-of-way existed before the effective date of this Ordinance; or
  - (2) The right-of-way's initial construction was approved under this Ordinance.
- H. A residential construction activity conducted on an existing single lot of any size if the activity:
  - (1) Does not result in the cumulative cutting, clearing, or grading of 40,000 square feet or more of forest;
  - (2) Does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this Ordinance; and
  - (3) Is the subject of a declaration of intent, Single Lot Exemption, filed with the Department, as provided for in Section 5 of this Article, which includes a sketch plan or site plan showing existing forest cover and the area of forest to be cleared.
- I. Strip or deep mining of coal regulated under Natural Resources Article, Title 7, Subtitle 5 or 5A, Annotated Code of Maryland.
- J. Noncoal surface mining regulated under Natural Resources Article, Title 7, Subtitle 6A, Annotated Code of Maryland.
- K. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child, grandchild, parent or sibling of the owner, provided that:
  - (1) The activity does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest; and
  - (2) The activity is the subject of a declaration of intent, Intrafamily Transfer Exemption, filed with the Department, as provided for in Section 5 of this Article, which includes a sketch plan or site plan showing existing forest cover and the area of forest to be cleared,

and which states that transfer of ownership may result in a loss of exemption.

- (3) If the activity requires a final plat of subdivision, the plat must include the following:
  - (a) The signature of each grantor, with the relationship to the grantee, and the signature of each grantee, with the relationship to the grantor; and
  - (b) A note which states that the subdivision is for the purpose of constructing a dwelling house for the use of the grantee, and that if the land does not remain in the possession of the grantee, the owner must notify the Department and may lose exemption from the Charles County Forest Conservation Ordinance.

L. A final plat of subdivision, a final site plan, or a sediment control plan approved before the effective date of the County Forest Conservation Ordinance.

M. A valid preliminary plan of subdivision approved before July 1, 1991.

N. All or parts of a Planned Unit Development that, by December 31, 1991, have:

- (1) Met all local requirements for planned unit development approval; and
- (2) Obtained initial development plan approval by the Charles County Commissioners.

O. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, for 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) The transfer is the subject of a declaration of intent, Real Estate Transfer Exemption, as provided for in Section 5 of this Article; and
- (3) The final plat includes:

- (a) A note stating that the subdivision is for the sole purpose of transfer; and
  - (b) The signatures of all Grantors and Grantees.
  
- P. A subdivision activity required for the purpose of separating an existing dwelling unit from the parent parcel provided that:
  - (1) The proposed activity does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest.
  - (2) The new lot shall be less than two times the existing base zoning and therefore could not be further subdivided.
  - (3) The residue shall be consistent with the definition of “residue” as defined under Article II, 298-2 of this Ordinance.
  - (4) The residue will be subject to the Forest Conservation Ordinance when it is further developed or subdivided.
  
- Q. The cutting or clearing of trees to comply with the requirements of 14 CFR §77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation and any disturbance not located within the navigable airspace will be subject to this Ordinance, unless otherwise exempt.
  
- R. Development activities that occur on a parcel or lot previously developed with structures and covered by paved surfaces.
  - (1) Should the parcel or lot be partially covered in paved surface, the paved area is to be subtracted from the net tract area and forest conservation shall be provided for the remainder of the parcel or lot.
  - (2) Other exemptions from this Ordinance can not be used in conjunction with this exemption.

298-5 Declaration of Intent.

- A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, §§5-103 and 5-1601--5 1612, Annotated Code of Maryland and this Ordinance.
  
- B. A person seeking an exemption under Section -4, C, D, H, K, and O of this Article shall file the applicable declaration of intent with the Department.
  
- 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 5 years of the effective date of the declaration of intent:
- (1) There shall be an immediate loss of exemption; and
  - (2) There may be a noncompliance action taken by the Department as appropriate.
- 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 Ordinance are satisfied.
- F. The Department may require a person failing to file a declaration of intent or found to be in noncompliance with a declaration of intent to:
- (1) Meet the retention, afforestation and reforestation requirements established in Articles III--XIII of this Ordinance;
  - (2) Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the declaration of intent;
  - (3) Be subject to other enforcement actions appropriate under Natural Resources Article §§5-1601--5-1612, Annotated Code of Maryland and this Ordinance; or
  - (4) File a declaration of intent with the Department.
- G. In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Ordinance.
- H. The declaration of intent is effective for 5 years.

#### Article IV General Requirements

298-6

- A. A person making application on or after the effective date of January 1,

1993, for subdivision plan approval for an area of land of 40,000 square feet or greater shall:

- (1) Submit to the Department a forest stand delineation and a forest conservation plan for the lot for parcel on which the development is located; and
- (2) Use methods approved by the Department, as provided in the Maryland Forest Conservation Technical Manual, to protect retained forests and trees during construction or,
- (3) On properties zoned CN, CC, CB, CV, BP, IG, IH, and portions of the planned development areas with these above uses be entitled to phase or defer submittal of a Forest Stand Delineation and Forest Conservation Plan until first application is made for County project, a site plan, a grading permit or sediment control approval, whichever comes first, provided that:
  - (a) The subdivision plan proposes to create no more than one additional buildable lot; and
  - (b) Forest Conservation Plan requirements may be deferred for no more than one subdivision plan on the parent parcel; and
  - (c) A note be included on the final plat which states that all parcels must satisfy requirements of the Forest Conservation Ordinance at the time application is made for a County project, site plan, grading permit or sediment control approval and that the parcels are not eligible for the Single Lot Exemption.

B. A person making application for any other regulated activity on or after the effective date of January 1, 1993, shall:

- (1) Submit to the department a Forest Stand Delineation and a Forest Conservation Plan for the lot or parcel on which the development is located; and
- (2) Use methods approved by the Department, as provided in the Maryland Forest Conservation Technical Manual, to protect retained forests and trees during construction.

298-7 If a local agency or person using state funds makes an application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D-G shall apply.

## Article V Forest Stand Delineation

### 298-8 Criteria

- A. A Forest Stand Delineation shall be submitted prior to or simultaneously with a preliminary subdivision plan, a subdivision of five lots or less, site plan, or County project plan, but shall be submitted prior to submission of a grading permit or sediment control application.
- B. A Forest Stand Delineation shall be submitted prior to or simultaneously with a Preliminary Forest Conservation Plan or Final Forest Conservation Plan, as applicable.
- C. The delineation shall be prepared and signed by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
- D. The Forest Stand Delineation is to be used in the development review process for determining the most suitable and appropriate sites for forest conservation and shall contain the following information:
  - (1) A topographic map delineating intermittent and perennial streams, slopes over 15 percent and steep slopes over 25 percent.
  - (2) 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;
  - (3) Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types in conformance with the standards for stand delineations as contained in the Maryland Forest Conservation Technical Manual;
  - (4) Location of 100-year floodplains, existing conservation easements, Resource Protection Zone areas, tidal and non-tidal wetlands, critical habitat areas, and Natural Heritage Areas.
  - (5) Location of existing structures and the historic significance of the structures on the subject tract or adjacent tracts.
  - (6) Information required by the Maryland Forest Conservation Technical Manual.
  - (7) Other information the Department determines is necessary to implement this Ordinance.

- E. A simplified delineation may be submitted:
- (1) When less than 40,000 square feet of forest cover is disturbed during a construction activity; or
  - (2) For areas under a preexisting long term protective agreement or an approved Forest Conservation Plan; or
  - (3) For forest stands designated as priority one forest retention areas and which are to remain undisturbed in their entirety; or
  - (4) For tracts subject to a site plan or grading permit application wherein development of the tract requires clearing and grading of 95% or more of the tract; and
  - (5) When approved by the Department.
- F. The Department shall consider a Simplified Forest Stand Delineation complete if it includes:
- (1) All requirements under Section -8 D(1)(2) and (4)-(7) of this Article;
  - (2) A map showing existing forest cover and the location of specimen or champion trees as verified by field inspection;
  - (3) A descriptive narrative of the applicable forest stands which addresses the informational categories in a stand summary data sheet as contained in the Maryland Forest Conservation Technical Manual; and
- G. An approved Forest Stand Delineation may remain in effect for a period not longer than 5 years.
- H. Time for Submittal Review Period
- (1) Within 30 calendar days after receipt of the Forest Stand Delineation, the Department shall notify the applicant whether the Forest Stand Delineation is complete and correct.
  - (2) If the Department fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
  - (3) The Department may require further information or provide for an additional 15 calendar days under extenuating circumstances.

## Article VI Forest Conservation Plan

### 298-9 General Provisions.

- A. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.
- B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:
  - (1) How techniques for forest retention have been exhausted;
  - (2) Why the priority forests and priority areas specified in Natural Resources Article, §5-1607(c) cannot be left in an undisturbed condition;
  - (3) If priority forests and priority areas cannot be left undisturbed, the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article §5-1607, Annotated Code of Maryland; and
  - (4) Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article §5-1607, Annotated Code of Maryland.
- C. The applicant shall demonstrate to the satisfaction of the Department that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.
- D. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Natural Resources Article, Sections 8-1201-1211, Annotated Code of Maryland and COMAR 08.05.04 is subject to both the non-tidal wetlands regulatory requirements and the requirements of this subtitle, subject to the following:
  - (1) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained shall be counted towards forest conservation requirements under this subtitle.
  - (2) For the purpose of calculating reforestation mitigation under this subtitle, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 shall be

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

- (3) Nontidal wetlands shall be considered to be priority areas for retention and replacement.

298-10 Preliminary Forest Conservation Plan.

- A. A Preliminary Forest Conservation Plan shall be prepared and signed by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
- B. Except for subdivisions of five lots or less, for minor development projects, and projects where a simplified delineation applies on a tract, a Preliminary Forest Conservation Plan shall:
  - (1) Be submitted with a preliminary plan of subdivision, County project plan, or site plan, and prior to the submission of a grading permit or sediment control application;
  - (2) Include the Forest Stand Delineation for the site;
  - (3) Include a table that lists the proposed values of the following, in square feet:
    - (a) Net tract area;
    - (b) Area of forest on site within net tract area;
    - (c) Area of forest proposed to be cleared;
    - (d) Area of forest conservation required; and
    - (e) Area of forest conservation that the applicant proposed to provide, including both onsite and offsite areas;
  - (4) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing: location of existing forest cover, limits of the net tract area, areas of proposed forest clearing, areas where retention of existing forest or afforestation or reforestation is proposed;
  - (5) Include an explanation of how the provisions of Section 9 of this Article have been met;

- (6) Show the proposed limits of disturbance;
  - (7) Preliminary subdivision plans using open space for off-site forest conservation easements must first be approved by the Planning Commission as part of the preliminary plan process.
- C. The review of the preliminary forest conservation plan shall be concurrent with the review of a site plan, County project plan, or preliminary subdivision plan.
  - D. During the different stages of the review process, the Preliminary Forest Conservation Plan may be modified provided the Department approves of the changes.

298-11 The Final Forest Conservation Plan.

- A. A Final Forest Conservation Plan shall be prepared and signed by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
- B. A Final Forest Conservation Plan shall:
  - (1) Include the submitted or approved Forest Stand Delineation, as applicable, and the approved Preliminary Forest Conservation Plan, or the information required for a Preliminary Forest Conservation Plan when a Preliminary Forest Conservation Plan is not required;
  - (2) Be submitted with the following:
    - (a) Construction or improvement plan drawings prior to or simultaneously with submission of a final subdivision plan;
    - (b) With an application for a site plan, after the approval of the Preliminary Forest Conservation Plan, if applicable;
    - (c) With an application for a grading permit, after approval of the Preliminary Forest Conservation Plan, if applicable;
    - (d) With an application for sediment control approval, after approval of the Preliminary Forest Conservation Plan if applicable;
    - (e) For a County project, prior to the commencement of any clearing or construction on the site, if (a) through (d) do not

apply;

- (3) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- (4) Include a proposed construction timetable showing the sequence of forest conservation procedures.
- (5) Show proposed stockpile areas;
- (6) Submit a narrative
- (7) 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;
- (8) Incorporate a binding 2-year maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
  - (a) Watering; and
  - (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the Maryland Forest Conservation Technical Manual;
- (9) Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
  - (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention;
  - (b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest; and
  - (c) Incorporates conservation easements, deed restrictions, covenants, and other agreements as required; and
- (10) Include the information required on a forest stand delineation; and
- (11) Include a tie down method for the easement, i.e. metes and bounds or distances and angles.

- (12) Other information the Department determines is necessary to implement this Ordinance.
- C. Review Period.
- (1) Within 45 calendar days after receipt of the Final Forest Conservation Plan, the Department shall notify the applicant whether the Forest Conservation Plan is complete and approved.
  - (2) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
  - (3) The Department may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.
  - (4) At the request of the applicant, the Department may extend the deadline under extenuating circumstances.
- D. The Department's review of a Final Forest Conservation Plan shall be concurrent with the review of construction or improvement plan drawings a site plan, a grading permit application, a sediment control application associated with the project, or a final plat for a project associated with the project, whichever shall first occur.
- E. The Department may revoke an approved Forest Conservation Plan and assess a penalty if it finds that:
- (1) A provision of the plan has been violated;
  - (2) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
  - (3) Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.
- F. The Department may issue a stop work order against a person who violates a provision of this Ordinance or a regulation, order, approved Forest Conservation Plan, or Maintenance Agreement.
- G. Before revoking approval of a Forest Conservation Plan, the Department shall notify the violator in writing and provide an opportunity for an informal administrative review hearing.

Article VII Afforestation and Retention

298-12 Afforestation Requirement

A person making application after the effective date of this Ordinance for subdivision, County project approval, a grading permit, or sediment control approval for an area of land of 40,000 square feet or greater, except as provided for in Article III, Section 4:

- A. Shall conduct afforestation on the lot or parcel in accordance with the following:
  - (1) A tract having less than 20 percent of the net tract area in forest cover shall be afforested up to at least 20 percent of the net tract area for the following land use categories:
    - (a) Agriculture and resource areas; and
    - (b) Medium density residential areas;
  - (2) A tract with less than 15 percent of its net tract area in forest cover shall be afforested up to at least 15 percent of the net tract area for the following land use categories:
    - (a) Institutional development areas;
    - (b) High density residential areas;
    - (c) Mixed use and planned unit development areas; and
    - (d) Commercial and industrial areas.
  
- B. Shall comply with the following when cutting or clearing forest cover that is currently below the afforestation percentages described in Section 7.1 - 12(A)(1) and (2) of this Article:
  - (1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
  - (2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

298-13 Retention.

The following trees, shrubs, plants, and specific areas shall be considered priority for

retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that all reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

- A. Trees, shrubs, and plants located in sensitive areas including the Resource Protection Zone, 100-year floodplain, intermittent and perennial streams and their forest management buffers, steep slopes exceeding 25% and steep slopes exceeding 15% with soils having a K value greater than 0.35, nontidal wetlands and critical habitat areas;
- 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 the Federal Endangered Species Act of 1973, 16 U.S.C., §§ 1531--1543, published in 50 CFR §§17.11 and 17.12, and the Maryland list of threatened and endangered species published under the Natural Resources Article, §§4-2A-01--4-2A-09 and 10-2A-01--10-2A-09, Annotated Code of Maryland, published in COMAR 08.03.08 and 08.02.12;
- D. Trees that:
  - (1) Are part of a historic site;
  - (2) Are associated with a historic structure; or
  - (3) Have been designated by the State or the Department as a national, State, or county champion tree; and
- E. Any tree having a diameter measured at 4.5 feet above the ground of:
  - (1) 30 inches or more; or
  - (2) 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the Maryland Department of Natural Resources.

#### Article VIII Reforestation

##### 298-14 Forest Conservation Threshold.

- A. There is a forest conservation threshold established for all land use categories, as provided in Subsection B of this Article. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for

every acre removed above the threshold to a ratio of 2 acres planted for every acre removed below the threshold.

- B. After every reasonable effort to minimize the cutting or clearing of trees and other woody plants has been exhausted in the development of a subdivision or site plan, grading and sediment control activities and development 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 B and C of this Article and consistent with Section -9 of this Article and the following forest conservation thresholds for the applicable land use category:

Category of Use Threshold Percentage

- |  |            |
|--|------------|
| (1) Agricultural and resource areas              | 50 percent |
| (2) Medium density residential areas             | 25 percent |
| (3) Institutional development areas              | 20 percent |
| (4) High density residential areas               | 20 percent |
| (5) Mixed use and planned unit development areas | 15 percent |
| (6) Commercial and industrial use areas          | 15 percent |

C. Calculations.

- (1) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 1/4 acre planted for every acre removed.
- (2) 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 under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Maryland Forest Conservation Technical Manual.
- (3) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for every 1 acre removed below the threshold.

- (4) Forest retained on site but not subject to long term protective agreements shall be considered as forest removed for the purpose of determining reforestation or afforestation requirements.

Article IX Requirements for Afforestation, Reforestation and Forest Retention

298-15 Sequence for onsite and offsite Afforestation, Reforestation and Retention

- A. After techniques for retaining existing forest on the site have been exhausted, the alternative methods for afforestation, reforestation and offsite retention, as determined by the Department, in order of most to least preferred, is as follows:
  - (1) Onsite afforestation or reforestation, if economically feasible, using transplanted nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
  - (2) Onsite afforestation or reforestation, using whip and seedling stock;
  - (3) Onsite landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covers 10,000 square feet or more of area;
  - (4) For projects located within the Development District, acquisition of offsite protective easements for existing forested areas not currently protected, afforestation and reforestation, in order of the most to least preferred with the given ratios:
    - (a) Located within the same, MD DNR 8-digit watershed as the development project is located and within the Development District. Area obtained to meet this criteria shall be retained at a 2:1 ratio or planted at a 1:1 ratio.  
The MD DNR 8-digit watersheds located in the Development District are Mattawoman Creek, Zekiah Swamp, Port Tobacco River and Potomac River.
    - (b) Located within the Development District but not in the same watershed as the project. Area obtained to meet this criteria shall be retained at a 2:1 ratio or planted at a 1:1 ratio.
    - (c) Located within the same, MD DNR 8-digit watershed as the development project is located, and outside the Development District. Area obtained to meet this criteria shall be retained at a 3:1 ratio or planted at a 2:1 ratio.

- (d) Located outside the Development District and not within the same watershed. Area obtained to meet this criteria shall be retained at a 4:1 ratio or planted at a 3:1 ratio.
- (5) For projects located in the Development District, methods for afforestation and reforestation planting requirements in order of most to least preferred are as follows:
- (a) Offsite afforestation or reforestation in areas described as a priority in Subsection C of this Article, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
  - (b) Offsite afforestation or reforestation in areas described as a priority in Subsection C of this Article, using whip and seedling stock;
  - (c) Offsite afforestation or reforestation in areas described as a priority in Subsection C of this Article, using natural regeneration;
  - (d) Offsite afforestation or reforestation in areas not specified as a priority in Subsection C of this Article, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
  - (e) Offsite afforestation or reforestation in areas not specified as a priority in Subsection C of this Article, using whip and seedling stock;
  - (f) Onsite afforestation or reforestation in areas not specified as a priority in Subsection C of this Article, using natural regeneration;
  - (g) Offsite afforestation or reforestation in areas not specified as a priority in Subsection C of this Article, using natural regeneration;
  - (h) Onsite afforestation or reforestation using street trees, based on a mature canopy coverage.

B. A sequence other than the one described in Section A of this Article may be used for a specific project, if necessary, to achieve the objectives of the county land use plan or county land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.

- C. The following shall be considered a priority for afforestation and reforestation:
- (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
  - (2) Establish or enhance nonforested areas on 100-year floodplains, when appropriate;
  - (3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
  - (4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - (5) Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35, including the slopes of ravines or other natural depressions;
  - (6) Establish or enhance forest plantings on marginal agricultural areas, where appropriate.
  - (7) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
  - (8) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.
- D. A person required to conduct afforestation or reforestation under this Article shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following development project completion.

298-16

Submission Requirements for Offsite Afforestation, Reforestation and Retention Areas

- A. The offsite area has a Forest Stand Delineation approved by the Department.
- B. The Final Forest Conservation Plan for the project is submitted for Department approval.
- C. A final plat showing each offsite area for long-term protection is submitted for Department approval.

- D. The appropriate long-term binding protective agreement is submitted for approval by the Department.
- E. Other information the Department determines is necessary to implement this Ordinance is provided.

Article X Short Term and Long Term Forest Management and Protection

298-17 Binding Protective Agreements.

- A. A person retaining forest or conducting afforestation or reforestation pursuant to an approved forest conservation plan shall comply with the requirements of COMAR 08.19.05.
- B. The County may require an endowment to cover the monitoring and enforcement costs of long term protective agreements. Endowment funds shall be deposited into a separate account for the sole use of monitoring and enforcing long term protective agreements and conservation easements.
- C. Approved final site plans, grading plans, and subdivision plans shall indicate those areas subject to long term protective agreements of conservation easements.

Article XI Payment Instead of Afforestation and Reforestation

298-18 Forest Conservation Fund.

- A. Charles County shall establish a forest conservation fund.
- B. If a person subject to this Ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money, at a rate of 25 cents per square foot of the area of required planting, into the county forest conservation fund.
- C. Money contributed instead of afforestation or reforestation under this Article shall be paid prior to approval of a Forest Conservation Plan.
- D. The county shall accomplish the reforestation or afforestation for which the money is deposited within 10 years after receipt of the money.
- E. Money contributed under this Article may remain in the account for a period of up to 10 years. At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money.

F. Money deposited in the local forest conservation fund:

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

G. Sites for Afforestation or Reforestation Using Fund Money.

- (1) Except as provided in Subsection G(2) of this section, the reforestation or afforestation requirement under this Article shall occur in the county and watershed in which the project is located.
- (2) If the reforestation or afforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the watershed in which the project is located but in a different county.

Article XII Recommended Tree Species List.

298-19 Recommended Tree Species List.

Tree species used for afforestation or reforestation shall be selected from a list of approved species established by the Department.

Article XIII Financial Security for Afforestation and Reforestation.

298-20 Bonding.

- A. A person required to conduct afforestation or reforestation under this Article shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Department. The surety shall:
- (1) Assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;
  - (2) Be in an amount equal to the estimated cost, as determined by the Department, of afforestation and reforestation; and
  - (3) Be in a form and of a content approved by the Department.

- B. If, after two growing seasons, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Maryland Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.
- C. The County Forest Conservation Program may incorporate the financial security set forth in Section (-19 A-D) or in COMAR 08.19.05.01B.

Article XIV Recertification and Revisions to Approved Plans

298-21 Changes to an Approved Forest Stand Delineation

- A. With the appropriate review and inspection fees, if applicable, the Department, consistent with the requirements of this Ordinance, shall review for approval any revisions to an approved Forest Stand Delineation.

298-22 Changes to an Approved Final Forest Conservation Plan

- A. The applicant shall provide a written request to the Planning Director containing the following information:
  - (1) The reason for the revision, and
  - (2) The location of the easement to be released, and
  - (3) A better than equal retention area proposed location
- B. The Planning Director shall review the request and notify the applicant by letter to either:
  - (1) Deny the request with an explanation, or
  - (2) Approve the request and notify the applicant of the additional items needed to complete the revision, which include the following:
    - (a) Fees
    - (b) Final Forest Conservation Plan and narrative
    - (c) Release of the approved long-term protection
    - (d) Implementation of the revised long-term protection
    - (e) Record plat

- (f) Other information the department determines is necessary to implement this Ordinance.

Article XV Standards for Protecting Trees from Construction Activities.

298-23 Protection Devices.

- A. The County thereby adopts the standards provided in the Maryland Department of Natural Resources Forest Conservation Manual.
- B. 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 that protective devices have been established.

Article XVI Variances

298-24 Procedure.

- A. A person may request a variance from this Ordinance or the requirements of Natural Resources Article, §§5-1601--5-1612, Annotated Code of Maryland by submitting an application for a variance to the Director of Planning and Growth Management or designee.
- B. The Director of Planning and Growth Management or designee is authorized to grant variances from the strict application of these regulations where the strict application of these regulations or amendments would result in peculiar and unusual practical difficulties to, or hardship upon, a property owner.
- C. An applicant for a variance shall:
  - (1) Describe the special conditions peculiar to the property which would cause the unusual practical difficulties or unwarranted hardship;
  - (2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
  - (3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
  - (4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;

- (5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
  - (6) Verify that the granting of a variance will not adversely affect water quality.
- D. The Director of Planning and Growth Management or designee shall make written findings that the applicant has met the requirements in Section C of this Article before the granting a variance.
  - E. Notice of a request for a variance shall be given by the applicant to the Maryland Department of Natural Resources within 15 days of the County's receipt of a request for a variance.
  - F. There is established by this Ordinance the right and authority of the Maryland Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article, §§5-1601---5-1612, Annotated Code of Maryland or this Ordinance.

Article XVII Penalties

298-25 Enforcement

A. Noncompliance Contribution Rates.

- (1) A person found to be in noncompliance with this Ordinance, regulations adopted under this Ordinance, the Forest Conservation Plan, or the associated 2-year Maintenance Agreement, shall be assessed by the Department the required contribution of 30 cents per square foot of the area found to be in noncompliance with required forest conservation.
- (2) Money collected under Section A(1) of this Article shall be deposited in a separate account in the forest conservation fund as required by Article XI of this Ordinance, and may be used by the Department for purposes related to implementing and enforcing this Ordinance.

B. Violation

- (1) In addition to the provisions under Section A of this Article, a person who violates a provision of this Ordinance or a regulation or order adopted or issued under this Ordinance is liable for a civil monetary penalty not to

exceed \$1,000, which may be recovered in a civil action brought by the Department.

(2) Each day a violation continues is a separate violation.

- C. The Department may seek an injunction requiring the person to cease violation of this Ordinance and take corrective action to restore or reforest an area.
- D. Charles County may also adopt the enforcement provisions under COMAR 08.19.06.03.
- E. The Department may revoke an approved Forest Conservation Plan for cause, including violation of conditions of the plan, obtaining a plan approval by misrepresentation, failing to disclose a relevant or material fact, or change in conditions. The Department shall notify the violator in writing and provide an opportunity for a hearing.
- F. The Department may issue a stop work order against any person who violates any provision of this subtitle or any regulation, order, approved plan, or Management Agreement.

#### Article XVIII Annual Report

298-26 On or before March 31 of each year, the Department shall submit to the Senate Economic and Environmental Affairs Committee and the House Environmental Matters Committee a report on:

- A. The number, location, and type of projects subject to the provisions of this Ordinance;
- B. The amount and location of acres cleared, conserved, and planted in connection with a development project;
- C. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
- D. The costs of implementing the Forest Conservation Program.

#### Article XIX Biennial Review by the Maryland Department of Natural Resources.

298-27 The Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

## Article XX Severability

298-28 If any part of this Ordinance or the Maryland Forest Conservation Technical Manual is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.

## Article XXI. Amendments

298-29 The County Commissioners may amend this Ordinance from time to time as may be necessary, after conducting a public hearing. Prior to the adoption of an amendment, the County Commissioners shall provide notice of the proposed changes to the Department of Natural Resources at least 30 days prior to the public hearing.

## Article XXII Effective Date

298-30 This Ordinance is hereby adopted on July 13, 2004, and effective August 27, 2004.

298-31 This Ordinance will apply to applications filed after the effective date of the Ordinance. Project applications currently under review have two years from the effective date of this Ordinance to be approved. Applications not approved within two years of the effective date of this Ordinance will be deemed void, and, a new application under the most current Ordinance will be required.