



Howard County

Internal Memorandum

Subject: Testimony and Fiscal Analysis on CR-__-2021
A Resolution pursuant to Section 16.1203 of the Howard County Code, adopting a new Forest Conservation Manual; and generally relating to Howard County Forest Conservation.

To: Lonnie R. Robbins
Chief Administrative Officer

From: Amy Gowan, Director
Department of Planning and Zoning

DS
AG

Date: December 17, 2020

The Departments of Planning and Zoning (DPZ) supports CR-__-2021 which repeals and replaces the Forest Conservation Manual (the Manual).

Background

The first Howard County Forest Conservation Act (FCA) became effective in January 1993. There were no significant changes to the FCA since 1999, except for a minor amendment in 2014 to allow the use of fee-in-lieu for urban tree planting and forest management. In February 2020, Council Bill 62-2019 repealed and replaced the FCA to provide major updates. These updates incorporated State law changes since 1999 and added improvements to increase forest retention, ensure more successful forest planting and strengthen the variance process.

Section 16.1203 of the FCA requires that a Forest Conservation Manual be prepared by the Department of Planning and Zoning and adopted by resolution of the County Council. The Forest Conservation Manual is the technical manual used to establish standards of performance required in preparing Forest Stand Delineations and Forest Conservation Plans. The Manual includes specific standards and guidelines for:

- Submission of Forest Conservation Plans, including forest stand delineations;
- Approval of Forest Conservation Plans;
- Forest retention priorities;
- Reforestation and afforestation calculations, priorities and preferred methods;
- Forest conservation agreements and financial security;
- Deed of forest conservation easements;
- Procedural variations for minor subdivisions, single lot site development plans, rural cluster subdivisions, and phased development;
- Forest mitigation banking; and
- Other information necessary to implement the Forest Conservation Act.

Impact of Legislation

The current version of the Forest Conservation Manual was adopted by Council Resolution No. 10-1998 and major updates are now needed to the Manual to be consistent with the new FCA and current practices. Given the extent of recent changes to the FCA, the Department of Planning and Zoning proposes to repeal and replace the current Manual. The new draft Manual reorganizes material from the current Manual, including deleting the old Chapter 2 on Key Concepts and reducing the number of Appendices from 15 to eight. Relevant material from Chapter 2 and the deleted appendices is incorporated into the main text and new material is added. The new draft Manual reflects recent changes to the FCA and incorporates current implementation policies and best management practices for forest planting and retention. Please see the attached list of key changes to the draft Forest Conservation Manual.

A Technical Advisory Committee, consisting of individuals with expertise in forestry and the forest conservation process, helped develop the draft Manual. The Department of Recreation and Parks and the Office of Community Sustainability also helped prepare the draft Manual, which was available for public comment during a 3-week review period from October 29 to November 23. A public meeting to provide an overview of the draft manual and receive comments was held on November 5.

Fiscal Analysis

This legislation is not anticipated to result in any fiscal impacts to the County. The Manual implements current law and practice and imposes minor administrative updates that can be absorbed by current staffing levels.

cc: Holly Sun, Budget Administrator
Brook Mamo, Deputy Budget Administrator
Jennifer Sager, Legislative Coordinator, County Administration
Raul Delorme, Director, Recreation and Parks
Josh Feldmark, Administrator, Office of Community Sustainability

Key Changes to draft Forest Conservation Manual

December 17, 2020

Key Change to Manual	Reason for Change	Location in Manual
A new forest conservation worksheet incorporates revised thresholds and mitigation ratios, and calculates mitigation requirements for inside and outside the development site watershed, and for 75% on-site compliance.	Comply with County law change to Sections 16.1206, 16.1207 and 16.1209	Appendix C
The minimum width for an existing forest remains at 35 feet, but the width for a planted forest is increased to 50 feet, to improve the viability of planted forest.	Comply with County law change to Section 16.1201 (g)	Section 1.2
The exemption threshold for the cutting, clearing or grading of forest on a single lot or linear project is lowered from 40,000 to 20,000 square feet of forest.	Comply with State Law change and County law change to Section 16.1202 (b)(1)	Section 1.3.1
Exemptions are added for: land within the Priority Funding Area that was previously developed and covered by an impervious surface; maintenance or retrofit of stormwater management facilities; and stream restoration projects.	Comply with State Law change and County law change to Section 16.1202 (b)(1)	Section 1.3.1
A five-year time limitation is added to the Forest Stand Delineation (FSD).	Comply with State Law change and County law change to Section 16.1204 (c)	Section 2.1
The maintenance period for forest retention and planting is increased from two to three years.	Comply with County law change to Section 16.1204 (d) (7)	Section 3.10
A requirement is added that mitigation banks be considered as a mitigation option before a fee-in-lieu request is submitted.	Comply with State Law change and County law change to Section 16.1211 (a)(1)	Section 3.11
The fee-in-lieu is increased by 20% for development sites located outside the Priority Funding Area.	Comply with State Law change and County law change to Section 16.1211 (a)(2)	Section 3.11
Fee-in-lieu requests are limited to no more than one acre of forest conservation obligation for residential developments.	Comply with County law change to Section 16.1211 (a) (3)	Section 3.11
The fee-in-lieu amount is based on outside the watershed mitigation requirements.	New policy and procedure to reflect County Law change to Section 16.1206(c) and 16.1207(c)	Section 3.11
The variance process is amended to: adopt the State standard of unwarranted hardship; add six review criteria, based on State law; and require joint approval from DPZ, OCS and DRP.	Comply with County law change to Section 16.1216	Section 3.12

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<p>The Limit of Disturbance (LOD) for historic and specimen trees growing within a forest or in the open, is defined as a circle around the tree with a radius of 1.5' for every 1" of diameter at breast height (DBH). No more than 30% of the LOD for the tree may be disturbed.</p>	<p>Reflect current policy and procedure to reflect State Law changes and County law change to Section 16.1205(a)</p>	<p>Section 3.12 and 4.2.1</p>
<p>The net tract area is defined for various types of development.</p>	<p>Reflect current policy and procedure</p>	<p>Section 3.2</p>
<p>The reforestation threshold for mixed use development is increased from 15% to 20%.</p>	<p>Comply with County law change to Section 16.1206(c)(1)</p>	<p>Section 3.3.1</p>
<p>The mitigation ratio for clearing above the reforestation threshold is increased from ¼ to ½ acre for every acre cleared, so the break even point increases from saving 20% to 33% of the forest above the threshold.</p>	<p>Comply with County law change to Section 16.1206(c)(2)</p>	<p>Section 3.3.1 and 3.3.2</p>
<p>There are higher mitigation ratios for clearing above and below the thresholds if mitigation is provided outside the development site watershed. Watershed boundaries are based on MDE 12-digit watersheds.</p>	<p>Comply with County law change to Section 16.1201 (ee), 16.1206(c)(2) and 16.1207(c)(2)</p>	<p>Section 3.3.1 and Appendix A</p>
<p>Mitigation banks are preferred over off-site planting for mitigation locations.</p>	<p>Comply with County law change to Section 16.1208 (b)</p>	<p>Section 3.4</p>
<p>Off-site retention easements may only be established on property with development potential. Therefore, open space, preservation parcels and sites encumbered by preservation easements are not suitable for this use. However, retention easements may be placed in high priority areas on a County agricultural land preservation easement to meet the forest conservation obligation generated by a child or unrestricted lot release. In addition, a retention easement may be placed on a preservation parcel or a site with a preservation easement, if it is done at the same time that the preservation easement is recorded.</p>	<p>Reflect current policy and procedure and comply with County law change to Section 16.1205 (c).</p>	<p>Section 3.4.3</p>
<p>If forest retention areas are dominated by invasive species, the invasive species must be removed and the area replanted with native species. If this work is included in the approved Forest Conservation Plan, planting credit will be given for this work.</p>	<p>New policy and procedure to ensure native forest in retained areas, per County Law change to the definition of forest in Section 16.1201 (g).</p>	<p>Section 3.5</p>

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Requirements are added for the protection of: vegetation listed as rare, threatened or endangered; trees that are part of an historic site or associated with an historic structure; State Champion Trees and trees that are 75% or more of the diameter of a State Champion Tree for that same species; and trees having a 30-inch or greater DBH.	Comply with State Law change and County law change to Section 16.1205 (a)	Section 3.5.1
The County Green Infrastructure Network is added as a priority retention and planting area, and highly erodible soils (steep slopes of 15% with a high erodibility index) are added as a priority retention area.	Comply with County law change to Section 16.1205 (b) and 16.1208 (a)	Section 3.5.1 and 3.6.1
Nonresidential developments must establish Forest Conservation Easements (FCE) in all sensitive areas. The FCE must be a minimum 75-foot width from the banks of any perennial and intermittent stream.	Comply with County law change to Section 16.1209 (b)(1)	Section 3.7.4
Residential developments must meet a minimum of 75% of their obligation on-site by reducing lot sizes, clustering lots and maximizing open space. Infill subdivisions of ten lots or less are excluded from this requirement.	Comply with County law change to Section 16.1209 (b)(2)	Section 3.7.4
Residential developments in the RC and RR zoning districts must meet all forest conservation obligations on-site before they will be permitted to import development density.	Comply with County law change to Section 16.1209 (b)(3)	Section 3.7.4
A 35-foot setback is required from the rear and side lot lines for a detached or attached dwelling unit and any on-site or off-site planted Forest Conservation Easement. The setback may be eliminated if larger stock (two rows of one-inch minimum caliper) is planted along the edge of the Forest Conservation Easement.	Comply with County law change to Section 16.1209 (b)(4)	Section 3.7.4
The preferred planting methods are rearranged to prefer planting with nursery stock over other methods. (Previously, selective clearing and supplemental planting was the preferred method.)	Comply with County law change to Section 16.1208 (c)	Section 3.8
The use of species native to Maryland is required.	Comply with County law change to Section 16.1201(g) and reflect current policy and procedure	Section 3.9.2

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To encourage early canopy closure, which can help control the spread of invasive species, the successional stage planting specifications are reversed to specify two-thirds early successional species and one-third mid or late successional species. In addition, the place in canopy planting specifications increase overstory trees to 75% of the total plants and decrease understory trees to 25%.	Incorporate DRP planting procedures and forestry BMPs	Section 3.9.2
New options are added for planting stock size and density. Larger planting stock is generally required to ensure better plant survival. Smaller stock is generally limited to mitigation banks and steep slopes. All planting stock are required to have deer protection.	Incorporate DRP planting procedures and forestry BMPs	Section 3.9.3
The Limit of Disturbance must be 15' from a retention easement, to better protect trees at the edge of the easement.	New policy and procedure to provide better protection of retention areas	Section 4.2.1
Mowing of planted easements may be allowed under certain circumstances to reduce competition from invasive species.	Incorporate DRP planting procedures and forestry BMPs	Section 4.4.3
If extensive replanting is needed to meet the 75% survival rate at the end of the third growing season, the maintenance period will be extended.	Revised policy and procedure to reflect County Law change to Section 16.1204 (d)(7) and provide better survival for planted areas.	Section 4.5.3
DPZ may allow abandonment of up to 0.5 acres of an easement and the process requires public notice.	Comply with County law change to Section 16.1217	Section 5.13
Definitions are added for relocation and abandonment of an easement, and procedures are specified for each. Requests to abandon more than 0.5 acres of an easement must be approved by the County Council.	New policy and procedure to reflect County Law change to Section 16.1217.	Section 5.13
An FSD/Forest Conservation Plan can only be prepared by a licensed forester or landscape architect, or a certified arborist who is also a Maryland qualified professional. (Note: the latter qualification for an arborist is clarified in the Manual.)	Comply with County law change to Section 16.1204(b)	Section 5.2.1
A process is established to allow a single residential lot or parcel of 40,000 square feet or greater to meet forest conservation obligations on-site through a variance to Section 16.120(b)(4)(iii) of the Subdivision and Land Development Regulations, which prohibits forest conservation easements on a lot or buildable preservation parcel of less than ten acres.	Reflect current policy and procedure.	Section 5.7.6