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3 Chapter 298

4 Forest Conservation

5 [HISTORY: Adopted by the Board of County Commissioners of Charles County 7-13-2004 by Ord. No.
6 04-02. Amendments noted where applicable.]

7 GENERAL REFERENCES

8 Agricultural preservation districts — See Ch. 215.

9 [Flood damage control] **Floodplain management** — See Ch. 238.

10 Grading and sediment control — See Ch. 244.

11 Stormwater management — See Ch. 274.

12 Subdivision regulations — See Ch. 278.

13 Zoning regulations — See Ch. 297.

14

15 Article I

16 General Provisions

17 § 298-1 Purpose.

18 The purpose of this [c]Chapter is to establish a Charles County Forest Conservation Program pursuant to
19 the requirements of the Natural Resources Article, §§ 5-1601 through [5-1612] **5-1613**, of the Annotated
20 Code of Maryland.

21 § 298-2 Definitions.

22 In this [c]Chapter, the following terms have the meanings indicated. Any term not defined in this
23 [c]Chapter shall have the meaning as defined in the Charles County Zoning Ordinance.

24 AFFORESTATION

25 A. Establishment of a forest on an area from which forest cover has been absent for a long period of
26 time;

27 B. Planting of open areas which are not presently in forest cover; or

28 C. Establishment of a forest according to afforestation or reforestation standards as provided in the
29 Maryland **State** Forest Conservation Technical Manual.

1 AGRICULTURAL ACTIVITY

2 Farming activities including plowing, tillage, cropping, installation of best management practices,
3 seeding, cultivating and harvesting for production of food and fiber products (except commercial
4 logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod
5 production, [o]Orchards, nursery, and other products cultivated as part of a recognized commercial
6 enterprise.

7 AGRICULTURAL AND RESOURCE AREAS

8 [Undeveloped a] Areas zoned for densities of less than or equal to one (1) dwelling unit per five (5)
9 acres[and corresponds to the Charles County Zoning classification: Rural Conservation Deferred
10 Development District].

11 APPLICANT

12 A person who is applying for approval of a subdivision plan, site plan, County [p]Project or a
13 grading permit or sediment control approval or who is seeking or who has received approval of a
14 forest stand delineation or forest conservation plan.

15 APPROVED FOREST MANAGEMENT PLAN

16 A document:

17 A. Approved by the Department of Natural Resources forester assigned to the County in which the
18 property is located; and

19 B. Which operates as a protective agreement for forest conservation as described in the Natural
20 Resources Article, § 5-1607(e) and (f), of the Annotated Code of Maryland.

21 CALIPER

22 The diameter of a tree measured at six (6) inches above the root collar **for trees less than four (4)**
23 **inches in diameter, and twelve (12) inches above the root collar for trees more than four (4)**
24 **inches in diameter.**

25 CHAMPION TREE and CHAMPION TREE OF THE STATE

26 [A tree which appears in the State Forest Conservation Manual list of state champion trees, as may
27 be amended.] **The largest tree of its species within the United States, the State, the County,**
28 **municipality or as otherwise determined by the Maryland Department of Natural Resources**

29 CHESAPEAKE BAY CRITICAL AREA

30 Lands governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article
31 §§ 8-1801 through [8-1816] **8-1817**, of the Annotated Code of Maryland.

32 COMMERCIAL AND INDUSTRIAL AREAS

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

1 COMMERCIAL LOGGING OR TIMBER HARVESTING OPERATIONS

2 The cutting and removing of tree stems from a site for commercial purposes, leaving the root mass
3 intact.

4 **COUNTY**

5 **The Charles County Government**

6 COUNTY PROJECT

7 A **subdivision[,] or [construction, grading, or sediment and erosion control activity] Development**
8 **Project** on an area 40,000 square feet or greater by a County agency.

9 CRITICAL HABITAT AREA

10 A critical habitat for an endangered species and its surrounding protection area. A critical habitat
11 area [is an area determined by official or state regulations or guidelines to] **shall:**

12 A. Be likely to contribute to the long-term survival of the species;

13 B. Be likely to be occupied by the species for the foreseeable future; and

14 C. Constitute habitat of the species which is considered critical under the Natural Resources Article,
15 §§ [4-2a-04]4-2A-06 [and] or [10-2a-06]10-2A-06, of the Annotated Code of Maryland.

16 CRITICAL HABITAT FOR ENDANGERED SPECIES

17 A habitat occupied by an endangered species as determined or listed under the Natural Resources
18 Article, §§ [4-2a-04]4-2A-04 [and] or [10-2a-04]10-2A-04, of the Annotated Code of Maryland.

19 **CRITICAL ROOT ZONE**

20 **The area around a tree which is 1 foot of radial distance, or 1.5 feet for a specimen tree, for**
21 **every inch of tree diameter at breast height.**

22 DECLARATION OF INTENT

23 A. A signed statement by a landowner or the landowner's agent certifying that the activity on the
24 landowner's property:

25 (1) Is for certain activities exempted under this [c]Chapter or the Natural Resources
26 Article, §§ 5-103 and 5-1601 through [5-1612]5-1613, of the Annotated Code of
27 Maryland;

28 (2) Does not circumvent the requirements of this [c]Chapter or the Natural Resources
29 Article, §§ 5-103 and 5-1601 through [5-1612]5-1613, of the Annotated Code of
30 Maryland; and

31 (3) Does not conflict with the purposes of any **other** [d]Declaration of [i]Intent; or

32 B. The document required under COMAR 08.19.01.05 or this [c]Chapter.

33 DEPARTMENT

34 The Charles County [Planning Division]**Department charged with implementing the local forest**

1 **conservation program.**

2 DEVELOPMENT DISTRICT

3 The area designated as a "[d]Development [d]District" in the Charles County Comprehensive Plan.

4 DEVELOPMENT PROJECT

5 A. The grading or construction activities occurring on a specific tract that is 40,000 square feet or
6 greater in area.

7 B. Includes [r]Redevelopment [or expansion of existing development by more than 20% or 10,000
8 square feet, whichever is less].

9 **C. Includes expansion of an existing development by more than 20% or 10,000 square feet,**
10 **whichever is less.**

11 DEVELOPMENT PROJECT COMPLETION

12 For the purposes of afforestation, reforestation or payment into a fund **if the afforestation or**
13 **reforestation is not successful:**

14 A. The release of the development bond, if required, **and/or payment into the fund in the event**
15 **that the afforestation or reforestation is not successful; or**

16 B. [Acceptance of the project's streets, utilities and public services by the Department; or]

17 [C.] Designation by the Department or [state]State that a:

18 (1) Development []Project has been completed; or

19 (2) Particular stage **or phase** of a staged **or phased** Development Project, including a
20 planned unit development, has been completed.

21 **EXTENUATING CIRCUMSTANCES**

22 **Conditions requiring extension of a set time limit to process an application, render a decision**
23 **or conduct a public hearing.**

24 FOREST

25 A. A biological community dominated by trees and other woody plants covering a land area of
26 10,000 square feet or greater **with a minimum width of at least 35 feet, which includes:**

27 [B. "Forest" includes:]

28 (1) Areas that have at least 100 live trees per acre with at least 50[%] **percent** of those
29 trees having a two-inch or greater diameter at 4.5 feet above the ground and larger;
30 and

31 (2) Areas that have been cut but not cleared.

32 [(3) Minimum 35' width requirement.]

1 [C]B. "Forest" does not include [o]Orchards. [For the purposes of this definition, an orchard is a
2 group of trees cultivated for fruit or nut production.]

3 **FOREST CONSERVANCY DISTRICT BOARD**

4 The Charles County Forest Conservancy District Board created under the Natural Resources Article,
5 §§ 5-601 through 5-610, of the Annotated Code of Maryland.

6 **FOREST CONSERVATION**

7 The retention of existing forest or the creation of new forest according to afforestation or
8 reforestation standards, as provided in the Maryland **State** Forest Conservation Technical Manual.

9 **FOREST CONSERVATION AND MANAGEMENT AGREEMENT**

10 An agreement as stated in the Tax - Property Article, § 8-211, of the Annotated Code of Maryland.

11 **FOREST CONSERVATION PLAN**

12 A plan approved pursuant to the Natural Resources Article, §§ [5-1606]**5-1605** [and]through 5-
13 1607, of the Annotated Code of Maryland.

14 **FOREST COVER**

15 The area of a site meeting the definition of forest.

16 **FOREST MANAGEMENT PLAN**

17 A plan establishing best conservation and management practices for a landowner in assessment of
18 the resource values of forested property.

19 **[FOREST MANAGEMENT STREAM BUFFER**

20 The area within the Resource Protection Zone as defined in the Charles County Zoning Ordinance.]

21 **FOREST MITIGATION BANK**

22 **An approved area of land intentionally reserved for the purpose of preserving existing Forest,**
23 **through retention and/or restoration, or the creation of Forests undertaken expressly for the**
24 **purpose of providing easements for mitigation requirements.**

25 **FOREST MITIGATION BANK PLAN**

26 **A plan submitted for approval of a Forest Mitigation Bank to the Department by a person**
27 **proposing to establish a Forest Mitigation Bank.**

28 **FOREST STAND DELINEATION**

29 The methodology for evaluating the existing vegetation on a site proposed for development, as
30 provided in the Maryland **State** Forest Conservation Technical Manual.

31 **FORESTED SLOPES**

32 **An area meeting the definition of forest and growing on an area with a slope of 25 percent or**
33 **greater and covering an area of at least 10,000 square feet.**

1 GROWING SEASON

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

4 HIGH-DENSITY RESIDENTIAL AREAS

5 Land zoned **in accordance with the Charles County Zoning Ordinance which allows** for base
6 densities greater than one (1) dwelling unit per acre, including both existing and planned
7 development and their associated infrastructure, such as roads, utilities and water and sewer service
8 [corresponding to the Charles County Zoning Classification(s) of Village Residential, Medium-
9 Density Residential and High-Density Residential].

10 [HISTORIC SITE

11 A site listed on the National Register of Historic Places, the Maryland Register of Historic
12 Properties or an historic preservation easement monitored by the Maryland Historical Trust.]

13 [HISTORIC STRUCTURE

14 A structure listed on the National Register of Historic Places, the Maryland Register of Historic
15 properties or an historic preservation easement monitored by the Maryland Historical Trust.]

16 INSTITUTIONAL DEVELOPMENT AREAS

17 Schools, colleges and universities, military installations, transportation facilities, utility and sewer
18 projects, government offices and facilities, golf courses, recreation areas, parks, **religious facilities**
19 and cemeteries.

20 INTERMITTENT STREAM

21 **A stream in which surface water is absent during a portion of the year as shown on the most**
22 **recent 7.5 minute topographic quadrangle published by the United States Geological Survey**
23 **(USGS) and as confirmed by field verification.**

24 LANDSCAPING PLAN

25 A plan, **also known as an afforestation or reforestation plan:**

- 26 A. Drawn to scale, showing dimensions and details for **afforesting or** reforesting an area at least 35
27 feet wide and covering 2,500 square feet or greater in size;
- 28 B. Using native or indigenous plants[when appropriate]; and
- 29 C. Which is made part of an approved forest conservation plan.

30 LINEAR PROJECT

31 **A project whose configuration is elongated with nearly parallel sides and used to transport a**
32 **utility product or public service not otherwise contained in an application for subdivision, such**
33 **as electricity, gas, water, sewer, communications, trains, and vehicles. Linear projects may**
34 **traverse fee simple properties through defined boundaries or through easement rights.**

35 LOCAL AGENCY

1 Units of the Charles County [g]Government.

2 LOT

3 A unit of land, the boundaries of which have been established by subdivision of a larger parcel, and
4 which will not be the subject of further subdivision, as defined by the Natural Resources Article,
5 § 5-1601, of the Annotated Code of Maryland and this [c]Chapter, without an approved forest stand
6 delineation and forest conservation plan.

7 MAINTENANCE AGREEMENT

8 The two-year management agreement associated with afforestation or reforestation plans required
9 under the Natural Resources Article, § 5-1605, of the Annotated Code of Maryland and this
10 [c]Chapter.

11 MARYLAND STATE FOREST CONSERVATION TECHNICAL MANUAL

12 The technical manual published by the Maryland Department of Natural Resources and hereby
13 incorporated herein by reference, which is used to establish standards of performance required in
14 preparing forest stand delineations and forest conservation plans.

15 MEDIUM-DENSITY RESIDENTIAL AREAS

16 Land zoned **in accordance with the Charles County Zoning Ordinance which allows** for base
17 densities greater than one (1) dwelling unit per five (5) acres and less than or equal to one (1)
18 dwelling unit per acre, including both existing and planned development and their associated
19 infrastructure, such as roads, utilities and water and sewer service[, and corresponding to the Charles
20 County Zoning Classification(s) of Rural Residential, Low-Density Residential, Agricultural
21 Conservation and Rural Conservation].

22 MINOR DEVELOPMENT PROJECT

23 A project on less than five (5) acres of land containing not more than four (4) lots per acre.

24 MIXED-USE DEVELOPMENT

25 [A development project which includes two or more types of uses or varying intensities of a land use
26 and corresponds to Charles County Zoning Classification(s) of Planned Residential Development;
27 Mixed Use Zone; Planned Unit Development, if nonexempt; Waterfront Planned Community Zone;
28 Planned Employment and Industrial Park Zone; Planned Manufactured Home Park Zone; and
29 Residential Office Zone.] **A single high density development project, usually commercial in
30 nature, which includes two (2) or more types of uses.**

31 NATURAL REGENERATION

32 The natural establishment of trees and other vegetation with at least 400 woody, free-to-grow
33 seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

34 NAVIGABLE AIRSPACE

35 Airspace at and above the minimum flight altitudes prescribed by or under 14 CFR, [c]Chapter 1 of
36 FAA Regulations, including airspace needed for safe takeoff and landing.

1 NET TRACT AREA

2 A. Except in agriculture and resource areas **or linear project areas**, the total area of a site,
3 including both forested and non-forested areas, to the nearest [1/10] **one-tenth** acre[,], reduced by
4 [the area found to be within the boundaries of the one-hundred-year floodplain] **that area where**
5 **forest clearing is restricted by another County Ordinance or program.**

6 B. In agriculture and resource areas, the part of the total tract for which land use will be changed or
7 will no longer be used for primarily agricultural activities, reduced by the area [found to be within
8 the boundaries of the one-hundred-year floodplain] **where forest clearing is restricted by another**
9 **County ordinance or program; and**

10 C. For a linear project:

11 (i). **The area of a right-of-way width, new access roads and storage;**

12 **or**

13 (ii). **The limits of disturbance as shown on an application for sediment and erosion**
14 **control approval or in a capital improvements program project description.**

15 NONTIDAL WETLAND

16 A. An area that is inundated or saturated by surface or groundwater at a frequency and duration
17 sufficient to support, and under normal conditions does support, a prevalence of vegetation
18 typically adapted for life in saturated soil conditions, commonly known as "hydrophytic
19 vegetation."

20 B. An area considered a nontidal wetland in accordance with [the publication that contains the most
21 current accepted standards] **the “Federal Manual for Identifying and Delineating**
22 **Jurisdictional Wetlands”, published in 1989 and as may be amended and interpreted by**
23 **the U.S. Environmental Protection Agency.**

24 C. Does not include tidal wetlands regulated under the Natural Resources Article, Title [9] **8**, of the
25 Annotated Code of Maryland.

26 OFF SITE

27 Outside of the limits of the area encompassed by the **net** tract.

28 ONE-HUNDRED-YEAR FLOOD

29 A flood which has a one-percent (**1%**) chance of being equaled or exceeded in any given year.

30 ONE-HUNDRED-YEAR FLOODPLAIN

31 A nontidal floodplain zone, as defined in the Charles County Floodplain Management Ordinance.

32 ON SITE

33 Within the limits of the area encompassed by the net tract[, including an area classified as a one
34 hundred year floodplain].

35 ORCHARD

36 A group of trees cultivated for fruit or nut production.

- 1 PAVED SURFACE
- 2 Any ground surface that satisfies the definition of semi-impervious or impervious surface as defined
- 3 under Article IX, Critical Area Zone, of the Charles County Zoning Ordinance.
- 4 **PERENNIAL STREAM**
- 5 **A stream containing surface water throughout an average rainfall year, as shown on the most**
- 6 **recent 7.5 minute topographic quadrangle published by the United States Geological Survey,**
- 7 **as confirmed by field verification.**
- 8 PERSON
- 9 The federal government, the state, a County, a municipal corporation or other political subdivision
- 10 of the state or any of their units or an individual, receiver, trustee, guardian, executor, administrator,
- 11 fiduciary or representative of any kind or any partnership, firm, association, public or private
- 12 corporation or any of their affiliates, or any other entity.
- 13 PLANNED UNIT DEVELOPMENT
- 14 Development comprised of a combination of land uses or varying intensities of the same land use in
- 15 accordance with an integrated plan that provides flexibility in land use design approved by Charles
- 16 County with at least 20% of the land permanently dedicated to open space.
- 17 **PLANNING DIVISION**
- 18 **The Planning Division within the Charles County Department of Planning and Growth**
- 19 **Management.**
- 20 [PRIORITY AREAS FOR AFFORESTATION AND REFORESTATION
- 21 Those areas specified in Article IX, Section 15, Paragraph C of this ordinance which shall be
- 22 considered a priority for afforestation and reforestation.]
- 23 **PRIORITY FUNDING AREA**
- 24 **An area designated as a priority funding area on the Charles County Priority Funding Area**
- 25 **Map.**
- 26 PUBLIC UTILITY
- 27 Any:
- 28 A. Transmission line or electric generating station; or
- 29 B. Water, sewer, electric, gas, telephone, **fiber optic** or television cable service line.
- 30 **QUALIFIED PROFESSIONAL**
- 31 **A person who meets the requirements of COMAR 08.19.06.01A.**
- 32 **REDEVELOPMENT**
- 33 **Any proposed expansion, addition, or major facade change to an existing building, structure,**
- 34 **or parking facility.**
- 35 **REFORESTATION OR REFORESTED**

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

4 **A. "Reforestation" or "reforested" means the:**

5 **Creation of a biological community dominated by trees and other woody plants containing**

6 **at least 100 live trees per acre with at least 50 percent of those trees having the potential of**

7 **attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7**

8 **years.**

9 **B. "Reforestation" or "reforested" includes landscaping of areas under an approved**

10 **landscaping plan establishing a forest at least 35 feet wide and covering 2,500 square feet**

11 **or more of area, or contiguous to an area of forest retained under a permanent protective**

12 **easement at least 35 feet wide and covering 10,000 square feet or more of area.**

13 **C. "Reforestation" or "reforested" for a linear project involving overhead transmission lines**

14 **may consist of a biological community dominated by trees and woody shrubs with no**

15 **minimum height or diameter criteria.**

16 REGULATED ACTIVITY

17 Any of the following activities, when that activity occurs on a unit of land which is 40,000 square

18 feet or greater:

19 A. Subdivision;

20 B. Grading;

21 **C. Development Project;**

22 [C]D. An activity that requires a sediment control approval; or

23 [D]E. A County [p]Project.

24 RESIDUE

25 [Any area(s) of a parcel not the subject of a development proposal, but which are associated with the

26 subdivision and are of sufficient size and configuration to be eligible for additional subdivision into

27 two or more lots in the future, per § 278-46J] **As defined in** [of] the Charles County Subdivision

28 Regulations.

29 RETENTION

30 The deliberate holding and protecting of existing trees, shrubs or plants on the site according to

31 established standards as provided in the Maryland **State** Forest Conservation Technical Manual.

32 SEDIMENT CONTROL APPROVAL

33 The authorization of an activity regulated under a sediment control plan as provided in the

34 Environment Article, Title 4, of the Annotated Code of Maryland.

35 SEEDLING

36 An unbranched woody plant less than 24 inches in height and having a diameter of less than 1/2 inch

37 measured at two inches above the root collar.

1 SELECTIVE CLEARING

2 The careful and planned removal of trees, shrubs and plants using specific standards and protection
3 measures under an approved forest conservation plan.

4 SPECIMEN TREE

5 A tree having a diameter measured at 4.5 feet above the ground of 30 inches or more or trees having
6 75% or more of the diameter of the current [s]State [c]Champion [t]Tree of that species.

7 STREAM

8 A perennial or intermittent watercourse created naturally or artificially which contains flow from
9 surface water and water originating from a groundwater source during a portion of the year, as field
10 verified.

11 **STREAM BUFFER**

12 **The Resource Protection Zone as described in the Charles County Zoning Ordinance.**

13 **STREAM RESTORATION PROJECT**

14 **An activity that:**

15 **A. Is designed to stabilize stream banks or enhance stream function or habitat located**
16 **within an existing stream, waterway, or floodplain;**

17 **B. Avoids and minimizes impacts to forests and provides for replanting on-site an**
18 **equivalent number of trees to the number removed by the project;**

19 **C. May be performed under a municipal separate storm sewer permit, a watershed**
20 **implementation plan growth offset, or another plan administered by the state or local**
21 **government to achieve or maintain water quality standards; and**

22 **D. Is not performed to satisfy stormwater management, wetlands mitigation, or any other**
23 **regulatory requirement associated with proposed development activity.**

24 SUBDIVISION

25 Any division of a unit of land into two or more lots or parcels for the purpose, whether immediate or
26 future, of transfer of ownership, sale, lease, development or redevelopment.

27 TIMBER HARVESTING

28 A. A tree cutting operation affecting one or more acres of forest or developed woodland within a
29 one-year interval that disturbs 5,000 square feet or more of forest floor.

30 B. "Timber harvesting" does not include grubbing and clearing of root mass.

31 TRACT

32 Any parcel of real property or unit of land subject to an application for a grading permit or sediment
33 control **approval, Development Project approval**, subdivision approval, site plan approval, County
34 [p]Project approval or other areas of land subject to this [c]Chapter.

35 TRACT [FOR A,] PLANNED UNIT DEVELOPMENT

36 The entire property subject to a planned unit development.

37 TREE

1 A large, branched woody plant having one or several self-supporting stems or trunks and that
2 reaches a height of 20 feet or more at maturity.

3 VARIANCE

4 [A. Relief from the Natural Resources Article, §§ 5-1601 through 5-1612, of the Annotated Code of
5 Maryland or this [c]Chapter.

6 B. Does not mean a zoning variance.]

7 **Relief from any of the provisions of this Chapter sought pursuant to § 298-25.**

8 WATERSHED

9 All land lying within an area described as a subbasin in water quality regulations adopted by the
10 Department of the Environment under COMAR 26.08.02.08.

11 WHIP

12 An unbranched woody plant greater than 24 inches in height and having a diameter of less than one
13 inch **caliper** measured at two inches above the root collar.

14 § 298-3 Applicability.

15 Except as provided in § 298-4 of this article, this [c]Chapter applies to:

16 A. A person making application for a subdivision[, County project, site plan, grading or sediment
17 control] **or Development Project** approval on tracts of land 40,000 square feet or greater after
18 the effective date of this [c]Chapter.

19 B. A public utility not exempt under § 298-4E and G of this article.

20 C. County [government p]Projects on areas 40,000 square feet or greater.

21 § 298-4 Exemption.

22 This [c]Chapter does not apply to:

23 A. Highway construction activities under the Natural Resources Article, § 5-103, of the Annotated
24 Code of Maryland.

25 B. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article
26 §§ 8-1801 through 8-1816, Annotated Code of Maryland.

27 C. Commercial logging and timber harvesting operations, including harvesting conducted subject to
28 the Forest Conservation and Management Program under the Tax - Property Article, § 8-211,
29 Annotated Code of Maryland[, that are completed on or after July 1, 1991, and are conducted on
30 property which]:

31 **(1) That were completed before July 1, 1991; or**

32 **(2) That were completed on or after July 1, 1991 on property that is:**

1 [(1)]a. [Is t]The subject of a [d]Declaration of [i]Intent, forestry exemption, as provided
2 for in § 298-5 of this article, approved by the Department.

3 [(2)]b. [Does not become the subject of application for a regulated activity within five
4 years after completion of the logging or harvesting operation, and after which time a
5 regulated activity on the property shall be subject to the requirements of this chapter.] **Not**
6 **the subject of an application for a development project within the five years after the**
7 **logging or harvesting operation has ceased. After this five-year period, the property**
8 **shall be subject to this Chapter.**

9
10 D. Agricultural activities not resulting in a change in land use category, including agricultural
11 support buildings and other related structures built using accepted best management practices,
12 except that a person engaging in an agricultural activity clearing 40,000 square feet or greater of
13 forest within a one-year period may not receive an agricultural exemption unless the person
14 **obtains approval from the Department and** files a [d]Declaration of [i]Intent, agricultural
15 activity exemption, as provided for in § 298-5 of this article, which includes:

16 (1) A statement that the landowner or landowner's agent will practice agriculture on
17 that portion of the property for five years from the date of the declaration; and

18 (2) A sketch map or **detailed** site plan of the property which shows approximate
19 existing forest cover and the forest area to be cleared.

20 E. The cutting or clearing of public utility rights-of-way licensed [under Article 78, §§ 54A and 54B
21 or § 54-I, of the Annotated Code of Maryland or land for electric-generating stations licensed under
22 Article 78, §§ 54A and 54B or § 54-I, of the Annotated Code of Maryland] **pursuant to § 7-204, §**
23 **7-205, § 7-207, or § 7-208 of the Annotated Code of Maryland, or land for electric generating**
24 **stations licensed under public utility companies, § 7-205, § 7-207, or § 7-208 of the Annotated**
25 **Code of Maryland, if:**

26 (1) Required certificates of public convenience and necessity have been issued in
27 accordance with the Natural Resources Article, § 5-1603(f), of the Annotated Code
28 of Maryland; [and]

29 (2) Cutting or clearing of the forest is conducted to minimize the loss of forest[.]; **and,**

30 (3) **Said exemption is requested from the applicant and approved by the**
31 **Department prior to the commencement of clearing.**

32
33 F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under [Article
34 78, §§ 54A and 54B or § 54-I, of the Annotated Code of Maryland] **Public Utility Companies**
35 **§ 7-207 and § 7-208 or § 7-205 of the Annotated Code of Maryland.**

36 G. Except for a public utility subject to this [c]Chapter, routine maintenance or emergency repairs
37 of a public utility right-of-way if:

38 (1) The right-of-way existed before the effective date of this [c]Chapter; or

39 (2) The right-of-way's initial construction was approved under this [c]Chapter.

1 H. A residential [construction activity]**Development Project** conducted on an existing single lot of
2 any size, **or a linear project provided that** [if] the activity:

- 3 (1) Does not result in the cumulative cutting, clearing or grading of [40,000] **20,000**
4 square feet or more of forest;
- 5 (2) Does not result in the cutting, clearing or grading of a forest that is subject to the
6 requirements of a previous [f]Forest [c]Conservation [p]Plan approved under this
7 [c]Chapter; and
- 8 (3) Is the subject of a [d]Declaration of [i]Intent, single lot exemption, filed with the
9 Department, as provided for in § **298-5** of this article, which includes a **separate**
10 sketch [plan]**map** or **includes a detailed** site plan showing existing forest cover
11 and the area of forest to be cleared.

12 I. Strip or deep mining of coal regulated under the [Natural Resources Article, Title 7, Subtitle 5 or
13 5a] **Environment Article, Title 15, Subtitle 5 or 6**, of the Annotated Code of Maryland.

14
15 J. Noncoal surface mining regulated under the [Natural Resources Article, Title 7, Subtitle 6a]
16 **Environment Article, Title 15, Subtitle 8**, of the Annotated Code of Maryland.

17 K. An activity required for the purpose of constructing a dwelling house intended for the use of the
18 owner or a child **of the owner**, [grandchild, parent or sibling of the owner,] provided that:

- 19 (1) The activity does not result in the cutting, clearing or grading of more than
20 [40,000] **20,000** square feet of forest; and
- 21 (2) The activity is the subject of a [d]Declaration of [i]Intent, intrafamily transfer
22 exemption, filed with the Department, as provided for in § **298-5** of this article,
23 which includes a sketch [plan]**map** or **includes a detailed** site plan showing
24 existing forest cover and the area of forest to be cleared, and, which states that
25 transfer of ownership may result in a loss of exemption.
- 26 (3) If the activity requires a final plat of subdivision, the plat must include the
27 following:
- 28 (a) The signature of each grantor, with the relationship to the grantee, and the
29 signature of each grantee, with the relationship to the grantor.
- 30 (b) A note which states that the subdivision is for the purpose of constructing a
31 dwelling house for the use of the grantee and that, if the land does not
32 remain in the possession of the grantee **for five (5) years**, the owner must
33 notify the Department and may lose exemption from the Charles County
34 Forest Conservation Ordinance.

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

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

38 N. All or parts of a planned unit development that, by December 31, 1991, have:

- 1 (1) Met all local requirements for planned unit development approval; and
- 2 (2) Obtained initial development plan approval by the Charles County Commissioners.
- 3 O. A real estate transfer to provide a security, leasehold or other legal or equitable interest,
4 including a transfer of title, for a portion of a lot or parcel, if:
- 5 (1) The transfer does not involve a change in land use or new development or
6 [r]Redevelopment with associated land disturbing activities;
- 7 (2) The transfer is the subject of a [d]Declaration of [i]Intent, real estate transfer
8 exemption, as provided for in § 298-5 of this article; and
- 9 (3) The final plat includes:
- 10 (a) A note stating that the subdivision is for the sole purpose of **a real estate**
11 transfer; [and]
- 12 (b) The signatures of all grantors and grantees[.]; **and**
- 13 (c) **A note stating that if the property owner makes application for an**
14 **additional activity regulated under the Forest Conservation Ordinance**
15 **within a five (5) year period, then the Owner shall satisfy the**
16 **requirements established in the Charles County Forest Conservation**
17 **Ordinance.**
- 18 P. A subdivision activity required for the purpose of separating an existing dwelling unit from the
19 parent parcel, provided that:
- 20 (1) The proposed activity does not result in the cutting, clearing or grading of more
21 than [40,000] **20,000** square feet of forest.
- 22 (2) The new lot shall be less than two times the existing base zoning **minimum lot size**
23 **requirement** and therefore could not be further subdivided.
- 24 (3) The residue shall be consistent with the definition of "residue" as defined under
25 § 298-2 of this [c]Chapter.
- 26 (4) The residue will be subject to the Forest Conservation Ordinance when it is further
27 developed or subdivided.
- 28 Q. The cutting or clearing of trees to comply with the requirements of 14 CFR 77.25 relating to
29 objects affecting navigable airspace, provided that the Federal Aviation Administration has
30 determined that the trees are a hazard to aviation, and any disturbance not located within the
31 navigable airspace will be subject to this [c]Chapter, unless otherwise exempt.
- 32 [R. Development activities that occur on a parcel or lot previously developed with structures and
33 covered by paved surfaces.
- 34 (1) Should the parcel or lot be partially covered in paved surface, the paved area is to
35 be subtracted from the net tract area and forest conservation shall be provided for
36 the remainder of the parcel or lot.

1 (2) Other exemptions from this [c]Chapter cannot be used in conjunction with this
2 exemption.]

3 **R. An activity on a previously developed area covered by Paved Surface and located in the**
4 **Priority Funding Area.**

5 **S. Maintenance or retrofitting of a stormwater management structure that may include**
6 **clearing of vegetation or removal and trimming of trees, so long as the maintenance or**
7 **retrofitting is within the original limits of disturbance for construction of the existing**
8 **structure, or within any maintenance easement for access to the structure.**

9 **T. A stream restoration project, as defined in this Chapter, for which the applicant for a**
10 **grading or sediment control permit has executed a binding maintenance agreement of at**
11 **least 5 years with the affected property owner or owners.**

12 **U. A final plat application where no new lots are created.**

13 § 298-5 Declaration of intent.

14 A. The purpose of the [d]Declaration of [i]Intent is to verify that the proposed activity is exempt
15 under the Natural Resources Article, §§ 5-103 and 5-1601 through [5-1612] **5-1613**, of the
16 Annotated Code of Maryland and this [c]Chapter.

17 B. A person seeking an exemption under § 298-4C, D, H, K and O of this article shall file the
18 applicable [d]Declaration of [i]Intent with the Department.

19 C. The existence of a [d]Declaration of [i]Intent does not preclude another exempted activity on the
20 property subject to a declaration of intent, if the activity:

21 (1) Does not conflict with the purpose of any existing [d]Declaration of [i]Intent; and

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

23 D. If a regulated activity on the area covered by the [d]Declaration of [i]Intent occurs within five
24 (5) years of the effective date of the [d]Declaration of [i]Intent:

25 (1) There shall be an immediate loss of exemption; and

26 (2) There may be a noncompliance action taken by the Department, as appropriate.

27 E. An applicant may apply for a regulated activity on that area of the property not covered under
28 the [d]Declaration of [i]Intent if the requirements of this [c]Chapter are satisfied.

29 F. The Department may require a person failing to file a [d]Declaration of [i]Intent or found to be in
30 noncompliance with a [d]Declaration of [i]Intent to:

31 (1) Meet the retention, afforestation and reforestation requirements established in
32 Article III of this [c]Chapter;

33 (2) Pay a noncompliance fee **found in the Charles County Government Fees and**
34 **Charges Schedule for the current fiscal year** per square foot of forest cut or

1 cleared under the [d]Declaration of [i]Intent;

2 (3) Be subject to other enforcement actions appropriate under the Natural Resources
3 Article, §§ 5-1601 through [5-1612] 5-1613, of the Annotated Code of Maryland
4 and this [c]Chapter; or

5 (4) File a [d]Declaration of [i]Intent with the Department.

6 G. In its determination of appropriate enforcement action, the Department may consider whether
7 failure to file a [d]Declaration of [i]Intent by a person required to file is a knowing violation of
8 this [c]Chapter.

9 H. [The] A [d]Declaration of [i]Intent is effective for five years.

10 **I. Commercial Logging and Timber Harvesting. The requirements for a declaration of intent**
11 **may be satisfied by a forest management plan for the entire tract, prepared by a forester**
12 **licensed in Maryland according to the Business Occupations and Professions Article, Title**
13 **7, of the Annotated Code of Maryland, which outlines management practices needed to**
14 **meet the stated objectives for a minimum of 5 years.**

15 **J. Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of**
16 **intent may be part of an amended sediment and erosion control plan which ensures that the**
17 **activity meets the conditions for an exemption as stated in Article III, § 3.2C and D of this**
18 **Chapter.**

19 § 298-6 Application requirements.

20 A. A person making application on or after the effective date of January 1, 1993, for subdivision
21 plan approval for an area of land of 40,000 square feet or greater shall:

22 (1) Submit to the Department a forest stand delineation and a forest conservation plan
23 for the [lot or]parcel on which the [development]**subdivision plan** is located;

24 (2) Use methods approved by the Department, as provided in the Maryland **State**
25 **Forest Conservation Technical Manual**, to protect retained forests and trees during
26 construction; or

27 (3) On properties zoned [CN, CC, CB, CV, BP, IG, IH,] **for commercial and**
28 **industrial uses** and portions of the planned development areas with these above
29 uses **shall** be entitled to phase or defer submittal of a forest stand delineation and
30 forest conservation plan until application is made for a County [p]**Project**, a site
31 plan, [a grading permit or sediment control]**or Development Project** approval,
32 whichever comes first, provided that:

33 (a) The subdivision plan proposes to create no more than one additional
34 buildable lot;

35 (b) Forest conservation plan requirements may be deferred for no more than
36 one subdivision plan on the parent parcel; and

37 (c) A note is included on the final plat which states that all parcels must satisfy

1 requirements of the Forest Conservation Ordinance **and the requirements**
2 **of the Subdivision Regulations § 278-52** at the time application is made
3 for a County [p]Project, site plan, [grading permit or sediment control]or
4 **Development Project** approval, and that the parcels are not eligible for the
5 single lot exemption.

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

- 8 (1) Submit to the Department a forest stand delineation and a forest conservation plan
9 for the lot or parcel on which the [development] **regulated activity** is located.
- 10 (2) Use methods approved by the Department, as provided in the Maryland **State**
11 Forest Conservation Technical Manual, to protect retained forests and trees during
12 construction.

13 § 298-7 Application using state funds.

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

16 § 298-8 Forest stand delineation criteria.

- 17 A. A forest stand delineation shall be submitted prior to or simultaneously with a preliminary
18 subdivision plan, [a subdivision of five lots or less]a **Minor Subdivision as defined in the**
19 **Subdivision Regulations**, site plan or County [p]Project plan, but shall be submitted prior to
20 submission of a [grading permit or sediment control] **Development Project** application.
- 21 B. A forest stand delineation shall be submitted prior to or simultaneously with a [p]Preliminary
22 [f]Forest [c]Conservation plan or [f]Final [f]Forest [c]Conservation [p]Plan, as applicable.
- 23 C. The delineation shall be prepared and signed by a licensed forester, licensed landscape architect
24 or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A-B.
- 25 D. The forest stand delineation [is to]shall be used in the development review process [for
26 determining]to **determine** the most suitable and appropriate sites for forest conservation and
27 shall contain the following information:
- 28 (1) A topographic map delineating intermittent and perennial streams, slopes over 15%
29 and steep slopes over 25%.
- 30 (2) A soils map delineating soils with structural limitations, hydric soils or soils with a
31 soil "K" value greater than 0.35 on slopes of 15% or more.
- 32 (3) Forest stand maps indicating species **present**, location and size of trees and
33 showing dominant and codominant forest types in conformance with the standards
34 for stand delineations, as contained in the Maryland **State** Forest Conservation
35 Technical Manual.

- 1 (4) Location of one-hundred-year floodplains, existing conservation easements,
2 Resource Protection Zone areas, tidal and nontidal wetlands, critical habitat areas
3 and Natural Heritage Areas.
- 4 (5) Location of existing structures and the historic significance of the structures on the
5 subject tract or adjacent tracts.
- 6 (6) Information required by the Maryland **State** Forest Conservation Technical
7 Manual.
- 8 (7) **A letter of review from the Maryland Department of Natural Resources,
9 Wildlife and Heritage Service, regarding the presence of rare, threatened or
10 endangered species, dated not more than 5 years prior to the submittal date of
11 the plan.**
- 12 (8) Other information the Department determines is necessary to implement this
13 [c]Chapter.

14 E. [A simplified delineation may be submitted:] **Simplified Forest Stand Delineation:**

- 15 [(1) When less than 40,000 square feet of forest cover is disturbed during a
16 construction activity;
- 17 (2) For areas under a preexisting long-term protective agreement or an approved forest
18 conservation plan;
- 19 (3) For forest stands designated as priority-one forest retention areas and which are to
20 remain undisturbed in their entirety; or
- 21 (4) For tracts subject to a site plan or grading permit application wherein development
22 of the tract requires clearing and grading of 95% or more of the tract;
- 23 (5) When approved by the Department;]
- 24 (1) **May be submitted:**
 - 25 (a) **When no forest exists on the site;**
 - 26 (b) **When no forest on site is to be cut, cleared, or graded during a change of
27 use or a development activity, and all forest on the site is or will be
28 subject to a long-term protective agreement; OR**
 - 29 (c) **For tracts subject to a Development Project application wherein
30 development of the tract requires clearing and grading of 95% or more
31 of the tract; OR**
 - 32 (d) **When approved by the Department.**

33 [F.](2) The Department shall consider a [s]Simplified [f]Forest [s]Stand [d]Delineation
34 complete if it includes:

35 [(1)](a) All requirements under Subsection D[(1), (2) and (4) through (7)] of this

1 section.

2 [(2)](b) A map showing existing forest cover[and the location of specimen or
3 champion trees as verified by field inspection.];

4 (c) **Confirmation by a walk-through survey of forested areas to determine**
5 **that the proposed limit of disturbance will not contain any priority forest**
6 **areas or retention areas listed in §298-13.B[(3)](d)** A descriptive narrative
7 of the applicable forest stands which addresses the informational categories
8 in a stand summary data sheet, as contained in the Maryland **State** Forest
9 Conservation Technical Manual.

10 **F. Intermediate Forest Stand Delineation:**

11 (1) **An Intermediate Forest Stand Delineation may be submitted when a site has**
12 **existing forest and:**

13 (a) **All high priority forest areas are retained; and**

14 (b) **The forest retention amount will be equal to or greater than the break-**
15 **even point; and**

16 (c) **The retained forest includes all high priority areas, and will be placed**
17 **under a long-term protective agreement;**

18 **-or-**

19 (d) **When approved by the department.**

20 (2) **The Department shall consider an Intermediate Forest Stand Delineation**
21 **complete if it includes:**

22 (a) **All of the previously stated requirements of this article in § 298-8(E.2);**

23 (b) **The calculation necessary to determine that the development proposal**
24 **meets the condition of forest retention and protection in an amount**
25 **greater than or equal to the break-even amount (The Forest**
26 **Conservation Worksheet);**

27 (c) **A narrative describing forest composition, using dominant species, forest**
28 **association, or other description as specified in the Maryland State**
29 **Forest Conservation Technical Manual;**

30 (d) **Past and present management practices; and**

31 (e) **Potential of forest areas adjacent to proposed disturbance limits to**
32 **recover, or recommendations for management after disturbance.**

33 **G. A Full Forest Stand Delineation:**

34 (1) **Shall be used if a regulated activity and/or site does not fall within the**
35 **category for which an Intermediate or Simplified Forest Stand Delineation is**

1 applicable; and

2 (2) The Department shall consider a Full Forest Stand Delineation complete if it
3 includes an environmental features map and narrative containing:

4 (a) All of the previously stated requirements of this article in § 298-8(F.2);

5 (b) Location, description, and size of forest stands with forest stand
6 boundaries extending 200 feet off-site;

7 (c) Sampling location used for analysis and, if a plot method is used, the
8 center of the plots marked in the field;

9 (d) Field-verified locations of any priority retention areas listed in §298-
10 13.B; and

11 (e) Field verified locations of any priority afforestation or reforestation
12 areas located outside of existing forest areas.

13 [G.]F. [An approved forest stand delineation may remain in effect for a period not longer than five
14 years.] **Validity period.**

15 (1) An approved forest stand delineation may remain in effect for a period not
16 longer than five years.

17 (2) An approved and valid forest stand delineation may be approved for one
18 additional five-year period if the following conditions are met:

19 (a) The applicant files for a request for extension to the Department before
20 the original expiration of the approved forest stand delineation; and

21 (b) A licensed forester, licensed landscape architect or a qualified
22 professional who meets the requirements stated in COMAR
23 08.19.06.01A-B submits a letter to the Department certifying that the
24 forest and site conditions documented in the original forest stand
25 delineation are substantially unchanged.

26 (c) Upon approval of the extension, a copy of the narrative and plan will
27 be stamped and a new expiration date will be provided.

28 (d) A request to extend an expired forest stand delineation will not be
29 accepted.

30 H. Time for submittal review period.

31 (1) Within 30 calendar days after receipt of the forest stand delineation, the
32 Department shall notify the applicant whether the forest stand delineation is
33 complete and correct.

34 (2) If the Department fails to notify the applicant within 30 days, the delineation shall
35 be treated as [complete and correct] **approved**.

- 1 (3) **Under Extenuating Circumstances** the Department may require further
2 information **and/or** [provide for] **extend the review of a submittal by an**
3 additional 15 calendar days [under extenuating circumstances] **and will notify the**
4 **applicant accordingly.**

5 **Article II**
6 **Forest Conservation Plan**

7 § 298-9 General provisions.

8 A. In developing a forest conservation plan, the applicant shall give priority to techniques for
9 retaining existing forest on the site.

10 B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant
11 shall demonstrate to the satisfaction of the Department:

12 (1) How techniques for forest retention have been exhausted.

13 (2) Why the priority forests and priority areas specified in the Natural Resources
14 Article, § 5-1607(c), of the Annotated Code of Maryland, cannot be left in an
15 undisturbed condition[.]:

16 [(3)](a) If priority forests and priority areas cannot be left undisturbed, the sequence
17 for afforestation or reforestation **in § 298-15 of this Chapter** will be
18 followed in compliance with the Natural Resources Article, § 5-1607, of the
19 Annotated Code of Maryland.

20 [(4)](b) Where on the site in priority areas afforestation or reforestation, **as**
21 **specified in § 298-15 of this Chapter**, will occur in compliance with the
22 Natural Resources Article, § 5-1607, of the Annotated Code of Maryland.

23 (3) **How the disturbance to priority forests and priority areas specified in § 298-15**
24 **of this Chapter in accordance with the Natural Resources Article, § 5-**
25 **1607(c)(2), Annotated Code of Maryland, qualifies for a variance under §298-**
26 **25 of this Chapter.**

27 C. The applicant shall demonstrate to the satisfaction of the Department that the requirements for
28 afforestation or reforestation onsite or [off site] **off-site** cannot be reasonably accomplished if the
29 applicant proposes to make a payment into the local forest conservation fund [instead of
30 afforestation or reforestation] **or to purchase easements from an established Forest**
31 **Mitigation Bank.**

32 D. Nontidal wetlands. A regulated activity within the net tract area that occurs wholly or partly in
33 areas regulated as nontidal wetlands under the [Natural Resources Article, §§ 8-1201 through 8-
34 1211] **Environment Article, §§ 5-901-911**, of the Annotated Code of Maryland, and COMAR
35 [08.05.04] **26.23.01-06** is subject to both the nontidal wetlands regulatory requirements and the
36 requirements of this [c]Chapter, subject to the following:

37 (1) Any area of forest in the net tract area, including forest in nontidal wetlands that is

1 retained, shall be counted towards forest conservation requirements under this
2 [c]Chapter.

- 3 (2) For the purpose of calculating reforestation mitigation under this [c]Chapter, a
4 forested nontidal wetland permitted to be cut or cleared and required to be
5 mitigated under COMAR [08.05.04] **26.23.04** shall be shown on the forest
6 conservation plan and subtracted on an acre-for-acre basis from the total amount of
7 forest to be cut or cleared as part of a regulated activity.
- 8 (3) Nontidal wetlands shall be considered [to be]priority areas **as specified in § 298-**
9 **25 of this Chapter in accordance with the Natural Resources Article, § 5-**
10 **1607(c)(2), Annotated Code of Maryland,** for retention and replacement.
- 11 (4) **Forested nontidal wetland identification and delineation shall be included at**
12 **the earliest stage of planning to assist the applicant in avoidance and**
13 **reduction of impacts to the nontidal wetlands and to avoid delay in the**
14 **approval process.**

15 § 298-10 Preliminary [f]Forest [c]Conservation [p]Plan.

- 16 A. A [p]Preliminary [f]Forest [c]Conservation [p]Plan shall be prepared and signed by a licensed
17 forester, a licensed landscape architect or a qualified professional who meets the requirements
18 stated in COMAR 08.19.06.01A-B.
- 19 B. Except for [subdivisions of five lots or less] **a Minor Subdivision as defined in the Subdivision**
20 **Regulations,** for minor development projects and projects where a simplified delineation applies
21 on a tract, a [p]Preliminary [f]Forest [c]Conservation [p]Plan shall:
- 22 (1) Be submitted with a preliminary plan of subdivision[, County [p]Project plan or
23 site plan, and prior to the submission of a grading permit or sediment control
24 project application].
- 25 (2) **Be submitted with a County Project plan or site plan unless a Final Forest**
26 **Conservation Plan is provided and is accepted by the Department.**
- 27 ([2]3) Include the **information provided on a forest stand delineation as required in §**
28 **298-8.D of this article** for the site.
- 29 ([3]4) Include a table that lists the proposed values of the following, in **both acres and**
30 **square feet:**
- 31 (a) **Tract Area**
- 32
- 33 ([a]b) Net tract area.
- 34 ([b]c) Area of forest onsite within the net tract area.
- 35 ([c]d) Area of forest proposed to be cleared.
- 36 ([d]e) Area of forest conservation required, **or the breakeven point;** and

1 ([e]f) Area of forest conservation [that the applicant] proposed [to provide,]
2 including both on-site and off-site areas.
3

4 [(4) Include a clear graphic indication of the forest conservation provided on the site
5 drawn to scale, showing the location of existing forest cover, limits of the net tract
6 area, areas of proposed forest clearing and areas where retention of existing forest
7 or afforestation or reforestation is proposed.]

8 (5) **Include a clear graphic depiction of the following:**

9 (a) **Tract Area;**

10 (b) **Limits of net tract area;**

11 (c) **Proposed limits of disturbance;**

12 (c) **Forest Conservation easements proposed for the site drawn to scale;**

13 (d) **Existing forest cover;**

14 (e) **Limits of proposed forest clearing;**

15 (f) **Area of forest retention, afforestation and/or reforestation being
16 proposed;**

17 (g) **Proposed stockpile areas;**

18 (h) **Location and types of protective devices to be used during construction
19 activities to protect trees and areas of forest designated for
20 conservation.**

21 (i) **Specimen trees, including their associated Critical Root Zone and any
22 protection devices.**

23 [(5) Include an explanation of how the provisions of § 298-9 of this chapter have been
24 met.]

25 [(6) Show the proposed limits of disturbance.]

26 [(7) Preliminary subdivision plans using open space for off-site forest conservation
27 easements must first be approved by the Planning Commission as part of the
28 preliminary plan process.]

29 (6) **Include a proposed construction timetable listing the sequence of forest
30 conservation procedures. (7) Incorporate a proposed 2-year maintenance
31 agreement that shows how areas designated for afforestation or reforestation
32 will be maintained to ensure protection and satisfactory establishment.**

33 (8) **Include a narrative of how the provisions of § 298-9 of this [c]Chapter have
34 been met.**

35 (9) **Include any approved or requested variances associated with the project.**

1 **C. Preliminary subdivision plans using open space for the establishment of Forest Mitigation**
2 **Banks for off-site forest conservation easements must be approved by the Planning**
3 **Commission as part of the preliminary plan process.**

4 [C]D. The review of the [p]Preliminary [f]Forest [c]Conservation [p]Plan shall be concurrent with
5 the review of a site plan, County [p]Project plan or preliminary subdivision plan, **unless a Final**
6 **Forest Conservation Plan is accepted by the Department as described above in B(2) of this**
7 **Section.**

8 [D]E. During the different stages of the review process, the [p]Preliminary [f]Forest
9 [c]Conservation [p]Plan may be modified, provided that the Department approves of the
10 changes.

11 § 298-11 Final [f]Forest [c]Conservation [p]Plan.

12 A. A [f]Final [f]Forest [c]Conservation [p]Plan shall be prepared and signed by a licensed forester,
13 a licensed landscape architect or a qualified professional who meets the requirements stated in
14 COMAR 08.19.06.01A-B.

15 B. A [f]Final [f]Forest [c]Conservation [p]Plan shall:

16 (1) Include the submitted or approved **forest** stand delineation, as applicable, and the
17 approved [p]Preliminary [f]Forest [c]Conservation [p]Plan or the information
18 required for a [p]Preliminary [f]Forest [c]Conservation [p]Plan when a
19 [p]Preliminary [f]Forest [c]Conservation [p]Plan is not required.

20 (2) Be submitted:

21 [(a) With construction or improvement plan drawings prior to or
22 simultaneously with submission of a final subdivision plan.

23 (b) With an application for a site plan, after the approval of the
24 [p]Preliminary [f]Forest [c]Conservation [p]Plan, if applicable.

25 (c) With an application for a grading permit, or building permit after
26 approval of the [p]Preliminary [f]Forest [c]Conservation [p]Plan, if
27 applicable.

28 (d) With an application for sediment control approval, after approval of the
29 [p]Preliminary [f]Forest [c]Conservation [p]Plan, if applicable.]

30 (a) **With an application for a Development Project, after the approval**
31 **of the Preliminary Forest Conservation Plan, if applicable.**

32 [(e)](b) For a County [p]Project, prior to the commencement of any clearing or
33 construction on the site, if Subsection B(2)(a) [through (c) do] **does** not
34 apply.

35 (3) Show proposed locations and types of protective devices to be used during
36 construction activities to protect trees and forests designated for conservation.

- 1 (4) Include a proposed construction timetable showing the sequence of forest
2 conservation procedures.
- 3 (5) Show proposed stockpile areas.
- 4 (6) Submit a narrative.
- 5 (7) In the case of afforestation or reforestation, include an afforestation or reforestation
6 plan, with a timetable and description of needed site and soil preparation, species,
7 size and spacing to be used.
- 8 (8) Incorporate a binding two-year maintenance agreement specified in COMAR
9 08.19.05.01 that details how the areas designated for afforestation or reforestation
10 will be maintained to ensure protection and satisfactory establishment, including:
- 11 (a) Watering.
- 12 (b) A reinforcement planting provision, if survival rates fall below required
13 standards, as provided in the Maryland **State** Forest Conservation
14 Technical Manual.
- 15 (9) Incorporate a long-term binding protective agreement as specified in COMAR
16 08.19.05.02 that:
- 17 (a) Provides protection for areas of forest conservation, including areas of
18 afforestation, reforestation and retention.
- 19 (b) Limits uses in areas of forest conservation to those uses that are
20 designated and consistent with forest conservation, including
21 recreational activities and forest management practices that are used to
22 preserve forest.
- 23 (c) Incorporates conservation easements, deed restrictions, covenants and
24 other agreements as required.
- 25 (10) Include the information required on a forest stand delineation.
- 26 (11) Include a tie-down method for [the easement] **any proposed forest conservation**
27 **easement**, i.e., metes and bounds or distances and angles.
- 28 **(12) Include the Critical Root Zones of any individual trees or clusters of trees,**
29 **shrubs, or plants not located in a proposed long-term protective agreement**
30 **but identified as having a priority for retention in § 298-13.**
- 31 [(12)] (13) Other information the Department determines is necessary to implement
32 this [c]Chapter.

33 C. Review period.

- 34 (1) Within 45 calendar days after receipt of the [f]Final [f]Forest [c]Conservation
35 [p]Plan, the Department shall notify the applicant whether the forest conservation
36 plan is complete and approved.

- 1 (2) If the Department fails to notify the applicant within 45 calendar days, the plan
2 shall be treated as complete and approved.
- 3 (3) **Under Extenuating Circumstances** [T]the Department may require further
4 information **and/or** [provide for] **extend the review of a submittal by an**
5 additional 15 calendar days [under extenuating circumstance] **and will notify the**
6 **applicant accordingly.**
- 7 (4) At the request of the applicant, the Department may extend the deadline under
8 extenuating circumstances.
- 9 D. The Department's review of a [f]Final [f]Forest [c]Conservation [p]Plan shall be concurrent with
10 the review of construction or improvement plan drawings,[a site plan,] a [grading permit
11 application, a sediment control] **Development Project** application [associated with the project] or
12 a final plat for a project [associated with the project], whichever shall first occur. **A Final Forest**
13 **Conservation Plan needs to be approved prior to approval of the aforementioned items.**
- 14 E. The Department may revoke an approved forest conservation plan and assess a penalty if it finds
15 that:
- 16 (1) A provision of the plan has been violated;
- 17 (2) Approval of the plan was obtained through fraud, misrepresentation, a false or
18 misleading statement or omission of a relevant or material fact; or
- 19 (3) Changes in the development or in the condition of the site necessitate preparation
20 of a new or amended plan.
- 21 F. The Department may issue a stop-work order against a person who violates a provision of this
22 [c]Chapter or a regulation, order, approved forest conservation plan or maintenance agreement.
- 23 G. [Before] **After** revoking approval of a forest conservation plan, the Department shall notify the
24 violator, in writing, and provide an opportunity for an informal administrative review hearing
25 **conducted by the Director of the Department or their designee.**

26 Article III

27 Afforestation; Retention; Reforestation

28 § 298-12 Afforestation requirement.

29 A person making application after the effective date of this [c]Chapter for a subdivision, County
30 [p]Project approval, **or** [a grading permit or sediment control]**Development Project** approval for an area
31 of land of 40,000 square feet or greater, except as provided for in Article I, § 298-4, shall:

32 A. Conduct afforestation on the lot or parcel in accordance with the following:

- 33 (1) A tract having less than 20% of the net tract area in forest cover shall be afforested
34 up to at least 20% of the net tract area for the following land use categories:

- 1 (a) Agriculture and [r]Resource [a]Areas.
- 2 (b) Medium-density [r]Residential [a]Areas.
- 3 (2) A tract with less than 15% of its net tract area in forest cover shall be afforested up
4 to at least 15% of the net tract area for the following land use categories:
- 5 (a) Institutional [d]Development [a]Areas.
- 6 (b) High-density [r]Residential [a]Areas.
- 7 (c) Mixed-use and [p]Planned [u]Unit [d]Development [a]Areas.
- 8 (d) Commercial and [i]Industrial [a]Areas.
- 9 B. Comply with the following when cutting or clearing forest cover that is currently below the
10 afforestation percentages described in Subsection A(1) and (2) of this section:
- 11 (1) The required afforestation level shall be determined by the amount of forest
12 existing before cutting or clearing begins.
- 13 (2) Forest cut or cleared below the required afforestation level shall be reforested or
14 afforested at a 2:1 ratio and added to the amount of afforestation necessary to reach
15 the minimum required afforestation level, as determined by the amount of forest
16 existing before cutting or clearing began.
- 17 C. **Afforestation requirements under this section shall be accomplished with within one (1)**
18 **year or two (2) growing seasons after **Development Project Completion.****
- 19 D. **If afforestation cannot be reasonably accomplished on-site or off-site, the requirement to**
20 **pay into to a Forest Conservation Fund shall be met upon approval of the Final Forest**
21 **Conservation Plan and prior to Department approval of a subdivision[, site plan,] or**
22 **Development Project.**
- 23 E. **Linear projects that involve no change in land use may not be subject to afforestation**
24 **requirements.**
- 25 F. **Afforestation planting requirements shall be implemented in accordance with the**
26 **Maryland State Technical Manual with respect to the number of trees per acre, spacing,**
27 **and survivability requirements.**

28 § 298-13 Retention.

- 29 A. The following trees, shrubs, plants and specific areas shall be considered priority for retention
30 and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to
31 the satisfaction of the Department, that all reasonable efforts have been made to protect them and the
32 plan cannot be reasonably altered:

33 [A.](1) Trees, shrubs, and plants located in sensitive areas, including:

- 1 (a) the Resource Protection Zone,
- 2 (b) one-hundred-year floodplains,
- 3 (c) intermittent and perennial streams and their [forest management] buffers,
- 4 (d) coastal bays and their buffers,
- 5 (e) steep slopes exceeding 25%,
- 6 (f) [and] steep slopes exceeding 15%, with soils having a ["K"] value greater than
- 7 0.35, **and/or**
- 8 (g) nontidal wetlands and critical habitat areas.

9 [B.](2) Contiguous forest that connects the largest undeveloped or most vegetated tracts of
10 land within and adjacent to the site.

11 [C. Trees, shrubs or plants determined to be rare, threatened or endangered under the
12 Federal Endangered Species Act of 1973, 16 U.S.C. §§ 1531 through [1543] **1544**,
13 published in 50 CFR 17.11 and 17.12, and the Maryland list of threatened and
14 endangered species published under the Natural Resources Article, §§ 4-2a-01 through
15 4-2a-09 and 10-2a-01 through 10-2a-09, of the Annotated Code of Maryland, published
16 in COMAR 08.03.08 and 08.02.12.]

17 [D. Trees that:] **B. The following trees, shrubs, plants, and specific areas shall be considered**
18 **priority for retention and protection, and they shall be left in an undisturbed condition**
19 **unless the applicant has demonstrated, to the satisfaction of the County, that the applicant**
20 **qualifies for and has obtained a variance under § 298-25 of this Chapter;**

- 21 (1) [Are part of an] **Trees, shrubs, and plants located on a historic site;**
- 22 (2) **Trees, shrubs, and plants that** [A]are associated with a[n] historic structure; [or]
- 23 (3) **Trees that** [H]have been designated [by the state or the Department] as a national,
24 state or County champion tree.

25 [E.] (4) Any tree having a diameter measured at 4.5 feet above the ground of:

26 [(1)] **a.** Thirty inches or more; or

27 [(2)] **b.** Seventy-five percent or more of the diameter, measured at 4.5 feet
28 above the ground, of the current state champion tree of that species as
29 designated by the Maryland Department of Natural Resources.

30 (5) **Trees, shrubs or plants determined to be rare, threatened or endangered**
31 **under the Federal Endangered Species Act of 1973, 16 U.S.C. §§ 1531 through**
32 **[1543] 1544, published in 50 CFR 17.11 and 17.12, and the Maryland list of**
33 **threatened and endangered species published under the Natural Resources**
34 **Article, §§ 4-2a-01 through 4-2a-09 and 10-2a-01 through 10-2a-09, of the**
35 **Annotated Code of Maryland, published in COMAR 08.03.08 and 08.02.12; or**

(6) Areas that are the Critical Root Zone of a champion or specimen tree which would be disturbed more than 30 percent of said area.

§ 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 section. 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 two 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] **In the development or redevelopment of a property, the owner shall minimize the cutting and/or clearing of trees and other woody plants. In conjunction with a forest conservation plan, the owner** shall provide for reforestation or payment into the forest conservation fund[,] according to the formula set forth in Subsection[s B and]C [of this section] and consistent with § 298-9 of this [c]Chapter and the following forest conservation thresholds for the applicable land use category:

[Category of Use Threshold Percentage]	
Area	Threshold
Agricultural and resource	50%
Medium-density residential	25%
Institutional development	20%
High-density residential	20%
Mixed-use and planned unit development	15%
Commercial and industrial use	15%]

- (1) A tract with the following use category will have a 50% threshold percentage:
- (a) Agriculture and Resource Areas.
- (2) A tract with the following use category will have a 20% threshold percentage:
- (a) Medium-density Residential Areas.
- (3) A tract with the following use categories will have a 20% threshold percentage:

1 (a) Institutional Development Areas.

2 (b) High-density Residential Areas.

3 (2) A tract with the following use categories will have a 15% threshold
4 percentage:

5 (a) Mixed-use and Planned Unit Development Areas.

6 (b) Commercial and Industrial Areas

7 C. Calculations.

8 (1) For all existing forest cover measured to the nearest 1/10 acre cleared on the net
9 tract area above the applicable forest conservation threshold, the area of forest
10 removed shall be reforested at a ratio of 1/4 acre planted for every acre removed.

11 (2) Each acre of forest retained on the net tract area above the applicable forest
12 conservation threshold shall be credited against the total number of acres required
13 to be reforested under Subsection C(1) of this section. The calculation of the credit
14 shall be according to the criteria provided in the Maryland State Forest
15 Conservation Technical Manual.

16 (3) For all existing forest cover measured to the nearest 1/10 acre cleared on the net
17 tract area below the applicable forest conservation threshold, the area of forest
18 removed shall be reforested at a ratio of two acres planted for every one acre
19 removed below the threshold.

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

23

24 **D. Reforestation requirements under this section shall be accomplished within one (1) year or**
25 **two (2) growing seasons after Development Project Completion.**

26 **E. If reforestation cannot be reasonably accomplished on-site or off-site, the requirement to**
27 **pay into a Forest Conservation Fund shall be met upon approval of the Final Forest**
28 **Conservation Plan and prior to Department approval of a subdivision[, site plan,] or**
29 **Development Project.**

30 **F. Residential Lots of Record within the Watershed Conservation District (WCD) Zone**
31 **established before July 21, 2017 that are less than five (5) acres in size, may use the**
32 **Medium-density Residential Retention Threshold instead of the Agricultural and Resource**
33 **Area Retention Threshold, if all forest conservation requirements are being met onsite.**

34 § 298-15 Sequence for on-site and off-site afforestation, reforestation and retention.

35 A. After techniques for retaining existing forest on the site have been exhausted, the alternative

1 methods for afforestation, reforestation and off-site retention, as determined by the Department,
2 in order of most to least preferred, is as follows:

- 3 (1) On-site afforestation or reforestation[, if economically feasible,]using transplanted
4 nursery stock that is greater than 1.5 inches [diameter measured at 4.5 feet above
5 the ground]**caliper**;
- 6 (2) On-site afforestation or reforestation, using whip and seedling stock;
- 7 [(3) On-site landscaping of areas under an approved landscaping plan which establishes
8 a forest that is at least 35 feet wide and covers 10,000 square feet or more of area]

9 **(3) Natural regeneration**

- 10 [(4) For projects located within the development district, acquisition of off-site
11 protective easements for existing forested areas not currently protected,
12 afforestation and reforestation, in order of the most to least preferred with the given
13 ratios:

- 14 (a) Located within the same MD DNR eight-digit watershed as the
15 development project is located and within the development district.
16 Area obtained to meet this criteria shall be retained at a 2:1 ratio or
17 planted at a 1:1 ratio. The MD DNR eight-digit watersheds located
18 in the development district are Mattawoman Creek, Zekiah Swamp,
19 Port Tobacco River and Potomac River
- 20 (b) Located within the development district but not in the same
21 watershed as the project. Area obtained to meet this criteria shall be
22 retained at a 2:1 ratio or planted at a 1:1 ratio.
- 23 (c) Located within the same MD DNR 8-digit watershed as the
24 development project is located and outside the development district.
25 Area obtained to meet this criteria shall be retained at a 3:1 ratio or
26 planted at a 2:1 ratio.
- 27 (d) Located outside the development district and not within the same
28 watershed. Area obtained to meet this criteria shall be retained at a
29 4:1 ratio or planted at a 3:1 ratio.]

30 **4) Acquisition of off-site protective easements for existing forested areas,
31 afforestation or reforestation areas not currently protected, in order of the
32 most to least preferred with the given ratios is as follows:**

- 33 (a) **The project is located within the Development District and/or a
34 Priority Funding Area and the off-site easement is located within
35 the same MD DNR eight-digit watershed as the project. Area
36 obtained to meet this criterion shall be retained at a 1:1 ratio or
37 planted at a 1:1 ratio.**
- 38 (b) **The project is located within the Development District and/or a
39 Priority Funding Area and the off-site easement is not located
40 within the same MD DNR eight-digit watershed as the project.**

1 **Area obtained to meet this criterion shall be retained at a 2:1**
2 **ratio or planted at a 1:1 ratio.**

3 **(c) The project is not within the Development District and/or a**
4 **Priority Funding Area and the off-site easement is located within**
5 **the same MD DNR 8-digit watershed as the project. Area**
6 **obtained to meet this criterion shall be retained at a 2:1 ratio or**
7 **planted at a 1:1 ratio.**

8 **(d) The project is not within the Development District and/or a**
9 **Priority Funding Area and the off-site easement is not within the**
10 **same MD DNR 8-digit watershed as the project. Area obtained**
11 **to meet this criterion shall be retained at a 3:1 ratio or planted**
12 **at a 1:1 ratio.**

13 ([6]5) [For projects located in the development district, methods for afforestation and
14 reforestation planting requirements in order of most to least preferred are as
15 follows] **Afforestation and reforestation planting requirements in order of most**
16 **to least preferred are as follows:**

17 (a) Off-site afforestation or reforestation in areas described as a priority
18 in [Subsection C]§ 298-13.A of this [section] **Chapter**, using
19 transplanted or nursery stock that is greater than 1.5 inches [diameter
20 measured at 4.5 feet above the ground] **caliper**;

21 (b) Off-site afforestation or reforestation in areas described as a priority
22 in [Subsection C of this section]§ 298-13.A of this **Chapter**, using
23 whip and seedling stock;

24 (c) Off-site afforestation or reforestation in areas described as a priority
25 in [Subsection C of this section]§ 298-13.A of this **Chapter**, using
26 natural regeneration;

27 (d) Off-site afforestation or reforestation in areas not specified as a
28 priority in [Subsection C of this section]§ 298-13.A of this **Chapter**,
29 using transplanted or nursery stock that is greater than 1.5 inches
30 [diameter measured at 4.5 feet above the ground] **caliper**;

31 (e) Off-site afforestation or reforestation in areas not specified as a
32 priority in [Subsection C of this section] § 298-13.A of this
33 **Chapter**, using whip and seedling stock;

34 (f) On-site afforestation or reforestation in areas not specified as a
35 priority in [Subsection C of this section]§ 298-13.A of this **Chapter**,
36 using natural regeneration;

37 (g) Off-site afforestation or reforestation in areas not specified as a
38 priority in [Subsection C of this section]§ 298-13.A of this **Chapter**,
39 using natural regeneration;

40 (h) On-site afforestation or reforestation using street trees, based on a
41 mature canopy coverage.

1 (6) When all other options, both on-site and off-site, have been exhausted,
2 landscaping as a mitigation technique, conducted under an approved
3 landscaping plan that establishes a forest at least 35 feet wide and covering at
4 least 2,500 square feet of area.

5 B. A sequence other than the one described in Subsection A of this section may **be approved by**
6 **the Planning Director or designee to** be used for a specific project, if necessary, to achieve the
7 objectives of the County Land Use Plan or County land use policies or to take advantage of
8 opportunities to consolidate forest conservation efforts.

9 C. The following shall be considered [a priority] **priorities** for afforestation and reforestation:

- 10 (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams
11 **and coastal bays** to widths of at least 50 feet.
- 12 (2) Establish or enhance [non]forested areas on one-hundred-year floodplains, when
13 appropriate.
- 14 (3) Establish or increase existing forested corridors to connect existing forests within
15 or adjacent to the site[,] and, where practical, forested corridors should be a
16 minimum of 300 feet in width to facilitate wildlife movement.
- 17 (4) Establish or enhance forest buffers adjacent to critical habitats, where appropriate.
- 18 (5) Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15
19 percent or greater with a soil ["K[" value greater than 0.35, including the slopes
20 of ravines or other natural depressions.
- 21 (6) Establish or enhance forest plantings on marginal agricultural areas, where
22 appropriate.
- 23 (7) Establish buffers adjacent to areas of differing land use, when appropriate, or
24 adjacent to highways or utility rights-of-way.
- 25 (8) Establish forest areas adjacent to existing forests to increase the overall area of
26 contiguous forest cover, when appropriate.

27 (9) **Use native plant materials for afforestation or reforestation.** [D. A person required to
28 conduct afforestation or reforestation under this article shall accomplish it within one year or two
29 growing seasons, whichever is a greater time period, following development project completion.]

30 § 298-16 Submission requirements for off-site afforestation, reforestation and
31 retention areas.

32 A. The off-site area has a forest stand delineation approved by the Department **and has been**
33 **determined to be a priority for retention by the County therefore, establishing a Forest**
34 **Mitigation Bank on that area.**

35 B. The [f]Final [f]Forest [c]Conservation [p]Plan for the project is submitted for Department
36 approval.

- 1 C. A final plat showing each off-site area for long-term protection **and the benefiting project**
2 **name, or an exhibit showing any each offsite area for long term protection, i.e., metes and**
3 **bounds or distances and angles with the benefiting project name** is submitted for
4 Department approval.
- 5 D. The appropriate long-term binding protective agreement is submitted for approval by the
6 Department.
- 7 E. Other information the Department determines is necessary to implement this [c]Chapter is
8 provided.

9 § 298-17 Binding protective agreements.

- 10 A. A person retaining forest or conducting afforestation or reforestation pursuant to an approved
11 forest conservation plan shall comply with the requirements of COMAR 08.19.05.
- 12 B. The County may require [an endowment] **a surety instrument, as described in § 298-21 of this**
13 **Chapter**, to cover the monitoring and enforcement costs of long-term protective agreements.
14 [Endowment funds] **Surety instruments** shall be deposited into a separate account for the sole
15 use of monitoring and enforcing long-term protective agreements and conservation easements.
- 16 C. Approved final site plans, grading plans and subdivision plans shall indicate those areas subject
17 to long-term protective agreements of conservation easements.

18 § 298-18 Forest Conservation Fund.

- 19 A. Charles County shall establish a forest conservation fund.
- 20 B. If a person subject to this [c]Chapter demonstrates to the satisfaction of the Department that
21 requirements for afforestation **or reforestation** on site or off site cannot be reasonably
22 accomplished, **and appropriate areas for easement inside a Forest Mitigation Bank in the**
23 **same county or watershed are not available**, the person shall contribute money **into the**
24 **County Forest Conservation Fund**, at a rate [of \$0.25 per square foot of the area of required
25 planting into the County Forest Conservation Fund] **found in the Charles County Government**
26 **Fees and Charges Schedule for the current fiscal year**.
- 27 C. Money contributed [instead of afforestation or reforestation under this article] **to the Forest**
28 **Conservation Fund** shall be paid prior to approval of a [forest conservation plan] **Development**
29 **Project, final plat, or Department permit**.
- 30 D. The County shall accomplish the reforestation or afforestation for which the money is deposited
31 within [10 years after receipt of the money] **2 years or 3 growing seasons, whichever is a**
32 **greater time period, after receipt of the money**.
- 33 E. Money contributed under this article may remain in the account for a period of up to [10 years].
34 At the end of that time, any part that has not been used to meet the afforestation or reforestation
35 requirements shall be returned to the person who provided the money] **2 years or 3 growing**
36 **seasons, and at the end of that time period, any portion that has not been used to meet the**
37 **afforestation or reforestation requirements shall be returned to the person who provided**

1 **the money to be used for documented tree planting in the same county or watershed**
2 **beyond that required by this Chapter or other applicable statutes.**

3 F. Money deposited in the local forest conservation fund:

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

9 G. Sites for afforestation or reforestation using fund money.

- 10 (1) Except as provided in Subsection G(2) of this section, the reforestation or
11 afforestation requirement under this article shall occur in the County and watershed
12 in which the project is located.
- 13 (2) If the reforestation or afforestation requirement cannot be reasonably accomplished
14 in the County and watershed in which the project is located, then the reforestation
15 or afforestation shall occur in the watershed in which the project is located but in a
16 different County.
- 17 (3) **If the reforestation or afforestation requirement cannot be reasonably**
18 **accomplished in the County or watershed in which the project is located, then**
19 **the reforestation or afforestation shall be accomplished through purchase of**
20 **easements in establishment, or maintenance of a Forest Mitigation Bank in**
21 **accordance with regulations of the Department. The Reforestation Fund may**
22 **not be used to finance administrative activities associated with a mitigation**
23 **bank and any easements created by the Forest Conservation Fund may not be**
24 **sold to compensate for additional forest impacts.**

25 § 298-19 Recommended tree species list.

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

28 **§ 298-20 Forest Mitigation Banks**

29 **A. A person may create a Forest Mitigation Bank from which applicants may purchase acreage**
30 **to meet the afforestation and reforestation requirements of this Ordinance.**

31 **B. The Forest Mitigation Bank shall:**

- 32 (1) **Preserve an area of retention, afforestation or reforestation for the benefit of a**
33 **project not located on the bank property;**
- 34 (2) **Be protected by an easement, deed restrictions, or covenants which require the**
35 **land in the bank to remain forested in perpetuity and are enforceable by the**

1 County;

- 2 (3) Limit the use of the land in the bank to those activities which are consistent
3 with forest conservation such as recreational activities, forest management
4 under a forest conservation and management program under Tax-Property
5 Article, §8-211, Annotated Code of Maryland, or activities specified in a forest
6 management plan prepared by a licensed forester and approved by the
7 Department;
- 8 (4) **Use native plant materials for afforestation or reforestation**; and
- 9 (5) Cause trees to be planted which:
- 10 (a) Establish or enhance forested buffers adjacent to intermittent and
11 perennial streams and coastal bays to widths of at least 50 feet;
- 12 (b) Establish or increase existing forested corridors, which, where practical,
13 should be a minimum of 300 feet in width to facilitate wildlife movement, to
14 connect existing forests within or adjacent to the site;
- 15 (c) Establish or enhance forest buffers adjacent to critical habitats where
16 appropriate;
- 17 (d) Establish or enhance forested areas in 100-year floodplains;
- 18 (e) Stabilize slopes of 25 percent or greater;
- 19 (f) Stabilize slopes of 15 percent or greater with a soil K value greater than 0.35
20 including the slopes of ravines or other natural depressions;
- 21 (g) Establish buffers adjacent to areas of differing land use where appropriate,
22 or adjacent to highways or utility rights-of-way; or
- 23 (h) Establish forest areas adjacent to existing forests to increase the overall
24 area of contiguous forest cover, when appropriate.

25 C. A person proposing to create a Forest Mitigation Bank shall submit to the Department a:

- 26 (1) Completed application for a Simplified Forest Stand Delineation.
- 27 (2) Forest Mitigation Bank plan which contains a:
- 28 (a) Vicinity map of the proposed mitigation bank site;
- 29 (b) Simplified Forest Stand Delineation which meets the criteria in § 298-8 of
30 this Chapter.
- 31 (c) Detailed afforestation or reforestation plan, where applicable, which shall
32 include a timetable and description of the site and soil preparation needed,
33 species, size, and spacing to be utilized, prepared by a licensed Maryland
34 forester, a licensed landscape architect, or a qualified professional who
35 meets the requirements stated in COMAR 08.19.06.01A; and
- 36 (d) Proposed 2-year maintenance agreement that:
- 37 (i) Sets forth how the areas afforested or reforested will be maintained
38 to ensure protection and satisfactory establishment;

1 (ii) Complies with COMAR 08.19.04.05C(4)(a); and

2 (iii) Includes watering and reinforcement planting provisions if
3 survival falls below required standards;

4 (3) Copy of the deed to the property;

5 (4) Survey or other legally sufficient description of the bank site for inclusion in the
6 deeds of easement, deed restrictions, or covenants;

7 (5) Title report or other assurance that:

8 (a) The property is not encumbered by any covenants or other types of restrictions
9 which would impair the property's use as a Forest Mitigation Bank; and

10 (b) There is legally sufficient access to the Forest Mitigation Bank site which can
11 be used by the Department and its assignees to inspect the Forest Mitigation Bank;
12 and

13 (6) Description of the system to be used by the person owning and operating the
14 Forest Mitigation Bank to identify and keep track of which portions of the bank
15 have been debited to meet an applicant's offsite afforestation or reforestation
16 requirements.

17 (7) Preliminary subdivision plans using open space **for the establishment of Forest**
18 **Mitigation Banks** for off-site forest conservation easements must be approved by
19 the Planning Commission as part of the preliminary plan process.

20 D. The owner of an approved Forest Mitigation Bank shall enter into an agreement with the
21 County which contains:

22 (1) The approved Simplified Forest Stand Delineation and reforestation or
23 afforestation plan, where applicable.

24 (2) The approved system for marking and tracking which portions of the bank have
25 been debited; and

26 (3) An acknowledgment that the bank may not debit any portion of the afforested or
27 reforested land until 2 years of successful growth has been achieved unless the
28 bank owner has posted a bond or alternate form of security.

29 E. If a person subject to this Chapter demonstrates to the satisfaction of the Department that
30 requirements for reforestation or afforestation onsite or offsite cannot be reasonably
31 accomplished, the person may acquire acreage from a Forest Mitigation Bank.

32 F. The acreage shall be debited from an approved Forest Mitigation Bank prior to
33 Development Project approval.

34 § 298-[20]21 Bonding.

35 A. A person required to conduct afforestation or reforestation under this article shall furnish
36 financial security in the form of a bond, an irrevocable letter of credit or other security approved
37 by the Department. The surety shall:

38 (1) Assure that the afforestation, reforestation and the associated maintenance

1 agreement are conducted and maintained in accordance with the approved forest
2 conservation plan.

3 (2) Be in an amount equal to the estimated cost, as determined by the Department, of
4 afforestation and reforestation.

5 (3) Be in a form and of a content approved by the Department.

6 B. If, after two growing seasons, the plantings associated with the afforestation or reforestation
7 meet or exceed the standards of the Maryland **State** Forest Conservation Technical Manual, the
8 amount of the cash bond, letter of credit, surety bond or other security shall be returned or
9 released.

10 [C. The County Forest Conservation Program may incorporate the financial security set forth in
11 Subsections A and B or in COMAR 08.19.05.01B.]

12 § 298-[21]22 Changes to an approved forest stand delineation.

13 With the appropriate review and inspection fees, if applicable, the Department, consistent with the
14 requirements of this [c]Chapter, shall review for approval any revisions to an approved forest stand
15 delineation.

16 § 298-[22]23 Changes to an approved final forest conservation plan, **with**
17 **easement(s) recorded.**

18 A. The applicant shall provide a written request to the Planning Director containing the following
19 information:

20 (1) The reason for the revision;

21 (2) The location of the easement(s) to be released; and

22 (3) A better than equal retention area proposed location, **in accordance with**
23 **sequencing requirements in § 298-15.**

24 B. The Planning Director shall review the request and notify the applicant by letter to either:

25 (1) Deny the request with an explanation; or

26 (2) Approve the request and notify the applicant of the additional items needed to
27 complete the revision, which include the following:

28 (a) Fees.

29 (b) **Revised** Final [f]Forest [c]Conservation [p]Plan and narrative.

30 (c) Release of the approved long-term protection.

31 (d) Implementation of the revised long-term protection.

- 1 (e) [Record] **Final plat or an exhibit showing the existing and**
2 **proposed areas for long term protection, i.e., metes and bounds**
3 **or distances and angles with the benefitting project name.**
- 4 (f) Other information the Department determines is necessary to
5 implement this [c]Chapter.

6 § 298-[23]**24** Protection of trees from construction activities.

- 7 A. The County thereby adopts the standards provided in the Maryland [Department of Natural
8 Resources]**State** Forest Conservation Manual.
- 9 B. Before cutting, clearing, grading or construction begins on a site for which a forest conservation
10 plan is required by this [article]**Chapter**, the applicant shall demonstrate to the Department that
11 protective devices have been established.

12 § 298-[24]**25** Variance procedure.

- 13 A. A person may request a variance from this [c]Chapter [or the requirements of the Natural
14 Resources Article, §§ 5-1601 through 5-1612, of the Annotated Code of Maryland,] by
15 submitting [an application] **a request** for a variance to the Director of Planning and Growth
16 Management or designee.
- 17 B. The Director of Planning and Growth Management or designee is authorized to grant variances
18 from the strict application of these regulations where the strict application of these regulations or
19 amendments would result in peculiar and unusual practical difficulties to, or hardship upon, a
20 property owner.
- 21 C. An applicant for a variance shall:
- 22 (1) Describe the special [conditions peculiar to the property] **features of a site or**
23 **other circumstances which with implementation of this Chapter** would [cause
24 the unusual practical difficulties or] **result in unwarranted hardship to the**
25 **applicant.**
- 26 [(2) Describe how enforcement of these rules will deprive the applicant of rights
27 commonly enjoyed by others in similar areas.
- 28 (3) Verify that the granting of the variance will not confer on the applicant a special
29 privilege that would be denied to other applicants.]
- 30 [(4)] **(2)** [Verify] **Document** that the variance request is not based on conditions or
31 circumstances which are the result of actions by the applicant.
- 32 [(5) Verify that the request does not arise from a condition relating to land or building
33 use, either permitted or nonconforming, on a neighboring property.]
- 34 [(6)] **(3)** [Verify that] **Document how** the granting of a variance will not adversely affect
35 water quality **through proposed mitigation and protection measures.**

1 D. The Director of Planning and Growth Management or designee shall make written findings **to the**
2 **applicant** that the [applicant] **variance request** has **or has not** met the requirements in
3 Subsection C of this section. [the granting of a variance].

4 **E. If the Director of Planning and Growth Management or their designee would reject a**
5 **variance request; the applicant may file an appeal to the Board of Appeals. The aggrieved**
6 **applicant may file an appeal within 15 days of the signing of the decision. The appeals**
7 **process shall conform to the following requirements:**

8 (1) **Whenever an appeal is filed, the Director of Planning and Growth**
9 **Management, or their designee, shall transmit to the Board the entire record**
10 **relating to the action appealed from. All Board hearings or appeals are de**
11 **novo proceedings.**

12 (2) **An appeal stays all construction or activities that are the subject of a duly**
13 **issued stop-work order. An appeal stays all other actions by the Director of**
14 **Planning and Growth Management, or their designee, seeking enforcement or**
15 **compliance with the order or decision appealed from, unless the Director of**
16 **Planning and Growth Management, or their designee, certifies to the Board**
17 **that a stay would cause imminent peril to life or property. In that case,**
18 **proceedings shall not be stayed except by order of the Board or a court, issued**
19 **on application of the party seeking the stay, for due cause shown.**

20 (3) **The Board may reverse or affirm, in whole or in part, or may modify the**
21 **order, requirement, decision or determination appealed from and may make**
22 **any order, requirement, decision or determination that, in its opinion, ought to**
23 **be made in the case before it. To this end, the Board shall have all the powers**
24 **of the administrative official from whom the appeal was taken.**

25 (4) **When an appeal is taken to the Board in accordance with this section, the**
26 **Director of Planning and Growth Management or their designee, shall have**
27 **the initial burden of presenting to the Board sufficient evidence and argument**
28 **to justify the order or decision appealed from. The burden of presenting**
29 **evidence and argument to the contrary then shifts to the appellant, who shall**
30 **have the burden of persuasion on all questions of fact which are to be**
31 **determined by the Board.**

32 [E] **F.** [Notice of a request for a variance shall be given by the applicant to the Maryland Department
33 of Natural Resources within 15 days of the County's receipt of a request for a variance.] **The**
34 **Applicant shall provide to the Department of Natural Resources notification of a variance**
35 **request within 15 days of the receipt of the request by the Director of Planning and Growth**
36 **Management or designee.**

37 [F.] **G.** There is established by this [c]Chapter the right and authority of the Maryland Department of
38 Natural Resources to initiate or intervene in an administrative, judicial or other original
39 proceeding or appeal in the state concerning an approval of a variance under the Natural
40 Resources Article, §§ 5-1601 through 5-1612, of the Annotated Code of Maryland, or this
41 [c]Chapter.

42 Article IV

Administration and Enforcement

§ 298-[25]26 Enforcement.

A. Noncompliance contribution rates.

- (1) A person found to be in noncompliance with this [c]Chapter, regulations adopted under this [c]Chapter, the forest conservation plan or the associated two-year maintenance agreement shall[, according to state law,] be assessed by the Department the required contribution [of \$0.30 per square foot] **found in the Charles County Government Fees and Charges Schedule for the current fiscal year** of the area found to be in noncompliance [with required forest conservation].
- (2) Money collected under Subsection A(1) shall be deposited in a separate account in the Forest Conservation Fund as required by § 298-18 of this [c]Chapter, and may be used by the Department for purposes related to implementing and enforcing this [c]Chapter.

B. Violations.

- (1) In addition to the provisions under Subsection A of this section, a person who violates a provision of this [c]Chapter or a regulation or order adopted or issued under this [c]Chapter is liable for a civil monetary penalty not to exceed \$1,000, which may be recovered in a civil action brought by the [Department]County.
- (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 [c]Chapter 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]D. 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]E. The Department may issue a stop-work order against any person who violates any provision of this [c]Chapter or of any regulation, order, approved plan or management agreement.

F. The Department shall give notice to the Department of Natural Resources within 15 days after commencement of enforcement activity.

§ 298-[26]27 Annual report.

On or before March [3]1 of each year, the Department shall submit to the [Senate Economic and Environmental Affairs Committee and the House Environmental Matters Committee] **Department of Natural Resources** a report on:

- 1 A. The number, location and type of projects subject to the provisions of this [c]Chapter;
- 2 B. The amount and location of acres cleared, conserved and planted, **including any areas which**
3 **utilize Forest Mitigation Bank acreage or areas located in the 100-year floodplain**, in
4 connection with a [d]Development [p]Project;
- 5 C. The amount of reforestation and afforestation fees and noncompliance penalties collected and
6 expended, **the number of acres for which the fees were collected, and the number of acres**
7 **reforested, afforested, or conserved using the fees;**
- 8 D. The costs of implementing the Forest Conservation Program;
- 9 **E. Location and size of all Forest Mitigation Banks created during the past year with a**
10 **description of the priority areas afforested or reforested as specified in § 298-25 of this**
11 **Chapter in accordance with the Natural Resources Article, § 5-1607(c)(2), Annotated Code**
12 **of Maryland by the Bank;**
- 13 **F. Number of acres debited from each Forest Mitigation Bank since the last annual report;**
14 **and**
- 15 **G. Forest Mitigation Banks inspected since the last annual report;**
- 16 **H. Number, location, and types of violations and types of enforcement activities conducted;**
17 **and**
- 18 **I. The size and location of all conserved and planted forest areas shall be submitted in an**
19 **electronic geographic information system or computer aided design format if possible. If not**
20 **possible, the location shall be given by Maryland State Plane Grid Coordinates and 8 digit**
21 **subwatershed.**

22 § 298-[27]**28** Biennial review by the Maryland Department of Natural Resources.

23 The Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

24 § 298-[28]**29** Severability.

25 If any part of this [c]Chapter or the Maryland **State** Forest Conservation Technical Manual is declared
26 invalid, the remainder of the [c]Chapter shall not be affected and shall remain in force.

27 § 298-[29]**30** Amendments.

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

1 § 298-[30]31 When effective.

2 A. This [c]Chapter is hereby adopted on July 13, 2004, and effective August 27, 2004.

3 B. This [c]Chapter will apply to applications filed after the effective date of the [c]Chapter. Project
4 applications currently under review have two years from the effective date of this [c]Chapter to
5 be approved. Applications not approved within two years of the effective date of this [c]Chapter
6 will be deemed void and new application under the most current ordinance will be required.

DRAFT