

Approved: _____

Date: _____

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2019, Legislative Day No.

Bill No. __-19

Introduced by Mr. Pruski
(by request of the County Executive)

By the County Council,

Introduced and first read on
Public Hearing set for
Bill Expires

By Order: JoAnne Gray, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Subdivision and Development – Forest Conservation – Fees and Security

FOR the purpose of establishing the applicability of the provisions of this Ordinance; establishing standards for granting modifications to forest conservation requirements; revising the exceptions to the requirements for modifications to special priority retention areas; modifying the scope of the subtitle “Forest Conservation”; revising the requirements for forest stand delineations and forest conservation plans; revising the forest conservation thresholds applicable to reforestation; modifying reforestation ratio for clearing above a threshold; revising fees and security related to forest conservation; providing for the grandfathering of certain applications or permits associated with a site development plan; and generally relating to subdivision, development, and forest conservation.

BY renumbering: § 17-2-108(f) to be § 17-2-108(g); and § 17-6-303(c) to be § 17-6-303(d)
Anne Arundel County Code (2005, as amended)

BY adding: §§ 17-2-101(b)(14); 17-2-108(f); 17-6-301(b)(12); and 17-6-303(c)
Anne Arundel County Code (2005, as amended)

BY repealing and reenacting, with amendments: §§ 17-2-101(b)(12) and (13); 17-6-301(a)

EXPLANATION: CAPITALS indicate new matter added to existing law.

[[Brackets]] indicate matter deleted from existing law.

Captions and taglines in **bold** in this bill are catchwords and are not law.

and (b)(7), (10), and (11); 17-6-302(b)(5) and (c); 17-6-303(b); 17-6-306(a) and (b); and 17-11-101

Anne Arundel County Code (2005, as amended)

BY repealing, reenacting, and renumbering, with amendments: § 17-6-303(d) to be § 17-6-303(e)

Anne Arundel County Code (2005, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,* That §§ 17-2-108(f) and 17-6-303(c) and (d) of the Anne Arundel County Code (2005, as amended) are hereby renumbered to be §§ 17-2-108(g) and 17-6-303(d) and (e), respectively.

SECTION 2. *And be it further enacted,* That Section(s) of the Anne Arundel County Code (2005, as amended) read as follows:

ARTICLE 17. SUBDIVISION AND DEVELOPMENT

TITLE 2. GENERAL PROVISIONS

17-2-101. Scope; applicability.

(b) **Applicability to pending and future proceedings.** Subject to the grandfathering provisions of COMAR Title 27, this article applies to all pending and future proceedings and actions of any board, department, or agency empowered to decide applications under this Code, except that:

(12) for property located in the core in the Parole Town Center Growth Management Area, an application for final approval of a sketch plan, a preliminary plan, a proposed record plat, or for recommendation of approval of an application for a building or grading permit in connection with a preliminary plan or site development plan, or for approval of a site development plan for development that does not require a permit, filed before December 6, 2018, shall be governed by § 17-5-201 as it existed prior to December 6, 2018; [[and]]

(13) an application for sketch plan approval, final plan approval, preliminary plan approval, or approval of a building or grading permit associated with a site development plan filed before January 1, 2019 shall be governed by the provisions of § 17-6-110 as they existed prior to April 14, 2019[.]; AND

(14) AN APPLICATION FOR SKETCH PLAN APPROVAL, FINAL PLAN APPROVAL, PRELIMINARY PLAN APPROVAL, APPROVAL OF A BUILDING OR GRADING PERMIT ASSOCIATED WITH A SITE DEVELOPMENT PLAN APPROVED BEFORE THE EFFECTIVE DATE OF BILL NO. __-19 , AND ANY FUTURE REVISIONS TO ANY SUCH APPLICATION OR PERMIT THAT DO NOT CHANGE THE PROPOSED OR ACTUAL LIMIT OF DISTURBANCE SHALL BE GOVERNED BY THE PROVISIONS OF BILL NO. __-19 AS THEY EXISTED PRIOR TO THE EFFECTIVE DATE OF BILL NO. __-19.

17-2-108. Modifications.

(F) Modification to forest conservation for special priority retention areas.

(1) THE PLANNING AND ZONING OFFICER MAY GRANT A MODIFICATION TO THE FOREST CONSERVATION REQUIREMENTS FOR SPECIAL PRIORITY RETENTION AREAS CONTAINED IN § 17-6-303(C) OF THIS CODE ONLY IF THE APPLICANT DEMONSTRATES THAT:

(I) ENFORCEMENT OF THE REQUIREMENTS FOR SPECIAL PRIORITY RETENTION AREAS WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHERS IN SIMILAR AREAS;

(II) THE GRANTING OF THE MODIFICATION WILL NOT CONFER ON THE APPLICANT A SPECIAL PRIVILEGE THAT WOULD BE DENIED TO OTHER APPLICANTS;

(III) THE MODIFICATION REQUEST IS NOT BASED ON CONDITIONS OR CIRCUMSTANCES WHICH ARE THE RESULT OF ACTIONS BY THE APPLICANT;

(IV) THE MODIFICATION REQUEST DOES NOT ARISE FROM A CONDITION OF OR PERMITTED OR NONCONFORMING USE ON A NEIGHBORING PROPERTY;

(V) THE GRANTING OF A MODIFICATION WILL NOT ADVERSELY AFFECT WATER QUALITY; AND

(VI) BECAUSE OF THE SPECIAL FEATURES OF THE SITE OR OTHER CIRCUMSTANCES, STRICT IMPLEMENTATION OF THIS PROVISION WOULD RESULT IN AN UNWARRANTED HARDSHIP TO THE DEVELOPER AS THAT TERM IS DEFINED IN § 8-1808 OF THE NATURAL RESOURCES ARTICLE OF THE STATE CODE.

(2) THE PLANNING AND ZONING OFFICER SHALL MAKE WRITTEN FINDINGS THAT THE APPLICANT HAS MET THE REQUIREMENTS OF THIS SUBSECTION BEFORE THE OFFICER MAY GRANT A MODIFICATION.

[[f)] (G) **Conditions.** In granting a modification, the Planning and Zoning Officer may require conditions to secure the objectives of the provision that has been modified.

TITLE 6. GENERAL DEVELOPMENT PROVISIONS

SUBTITLE 3. FOREST CONSERVATION

17-6-301. Scope.

(a) **In general.** This subtitle applies to any public or private PRELIMINARY PLAN, SITE DEVELOPMENT PLAN, subdivision plan, or application for a grading or sediment control permit by any person, including a unit of State government and the County, on areas 40,000 square feet or greater.

(b) **Exceptions.** This subtitle does not apply to:

(7) [[residential construction on a single lot of any size]]DEVELOPMENT or a linear project if:

(i) [[the residential construction or linear project]] IT does not result in the CUMULATIVE cutting, clearing, or grading of more than 20,000 square feet of forest ON CONTIGUOUS LOTS UNDER COMMON OWNERSHIP; and

(ii) ~~[[the residential construction or linear project will]]~~ IT DOES not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this subtitle;

(10) a stream restoration project, as defined in the Natural Resources Article, § 5-1601, of the State Code, provided the applicant has a binding agreement with the owner to maintain the project for at least five years; ~~[[or]]~~

(11) maintenance or retrofitting of a stormwater management structure, including clearing of vegetation or removal and trimming of trees, provided the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure or within any maintenance easement for access to the structure~~[[.]]~~; OR

(12) PREVIOUSLY DEVELOPED AREAS COVERED BY IMPERVIOUS SURFACE AND LOCATED IN PRIORITY FUNDING AREAS AT THE TIME OF THE APPLICATION FOR SUBDIVISION PLAN, GRADING OR SEDIMENT CONTROL PERMIT APPROVAL.

17-6-302. Forest stand delineation.

(b) **Contents.** Except as otherwise provided in this section, a forest stand delineation shall consist of a narrative and shall contain or be accompanied by all information required by the Office of Planning and Zoning, including:

(5) information required by the State Forest Conservation Technical Manual AND COMAR TITLE 08, SUBTITLE 19 FOR A FULL FOREST STAND DELINEATION.

(c) **Simplified forest stand delineation for sites other than linear projects.** The Office of Planning and Zoning may approve a simplified forest stand delineation for sites other than linear projects if:

~~[[~~(1) (i) less than 40,000 square feet of forest cover is disturbed during any construction activity; or

(ii) forest cover disturbance is required by the County for the widening or improvement of existing County roads or utility extensions when, without the disturbance required by the County, the development itself would otherwise be exempt from the forest conservation provisions of this title;

(2) a forest conservation easement is entered into with the County to provide long-term protection for the area; and.

(3) the application for approval of the simplified forest stand delineation contains all information required by the Office of Planning and Zoning, including at least the following:

(i) a topography map that delineates intermittent and perennial streams and steep slopes;

(ii) soil mapping units and narrative that indicate soils with structural limitations, hydric soils, or highly erodible soils;

(iii) the location of 100-year floodplains; and

(iv) a map verified by a field inspection that shows existing forest cover, champion trees, and critical habitat areas.]]

(1) (I) FOREST DOES NOT CURRENTLY EXIST ON THE SITE OR FOREST ON THE SITE WILL NOT BE CUT OR CLEARED FOR THE PROPOSED DEVELOPMENT;

(II) ALL FOREST ON THE SITE WILL BE PROTECTED UNDER A LONG-TERM PROTECTIVE AGREEMENT BETWEEN THE DEVELOPER AND THE COUNTY; AND

(2) A FOREST STAND DELINEATION MAP, MEETING THE REQUIREMENTS OF COMAR 08.19.04.02 FOR A SIMPLIFIED FOREST STAND DELINEATION MAP, IS INCLUDED IN AND APPROVED AS PART OF THE APPLICATION.

17-6-303. Forest conservation plan.

(b) **Priority retention areas.** The following vegetation and areas are considered priority retention areas and shall be left undisturbed unless the [[developer demonstrates that reasonable efforts have been made to protect the vegetation and areas but the plan cannot be reasonably altered]] PLANNING AND ZONING OFFICER APPROVES A MODIFICATION DESCRIBED IN § 17-2-108 OF THIS CODE:

(1) trees, shrubs, and plants located in sensitive areas, including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, non-tidal wetlands, AND ALL ASSOCIATED BUFFERS; COUNTY-DESIGNATED GREENWAYS; and critical [[habitats]] HABITAT AREAS, AS DEFINED IN § 5-1601 OF THE NATURAL RESOURCES ARTICLE OF THE STATE CODE;

(2) contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site; AND

[[(3) trees, shrubs, or plants determined to be rare, threatened, or endangered under the Federal Endangered Species Act of 1973 set forth in 16 U.S.C. §§ 1531 – 1544 and in 50 CFR Part 17; the Maryland Nongame and Endangered Species Conservation Act set forth in the Natural Resources Article, §§ 10-2A-01 et seq., of the State Code, and COMAR, Title 08;

(4) trees that are champion trees, part of a historic site, or associated with a historic structure;

(5) a tree that has a diameter measured at 4.5 feet above the ground of 30 inches or more or that is 75% or more of the diameter of the current State champion tree of that species; and

(6) forested areas at least 35 feet wide with a total area of 10,000 square feet.]]

(3) FOREST INTERIOR DWELLING SPECIES (“FIDS”) HABITAT, MEANING WOODLAND AREAS OF SUFFICIENT SIZE AS TO BE FAVORABLE TO THE BREEDING OF FIDS, THAT MEETS ONE THE FOLLOWING CONDITIONS:

(I) A MINIMUM OF 50 ACRES IN SIZE AND CONTAINS AT LEAST 10 ACRES OF FOREST LOCATED MORE THAN 300 FEET FROM THE NEAREST FOREST EDGE; OR

(II) RIPARIAN FORESTS AT LEAST 50 ACRES IN SIZE WITH A MINIMUM AVERAGE WIDTH OF 300 FEET WITHIN THE WATERSHED OF A REGULATED STREAM.

(C) Special priority retention areas. THE FOLLOWING VEGETATION AND AREAS ARE CONSIDERED SPECIAL PRIORITY RETENTION AREAS, AND SHALL BE LEFT UNDISTURBED UNLESS THE DEVELOPER IS GRANTED A MODIFICATION UNDER 17-2-108(F) OF THIS CODE:

(1) TREES, SHRUBS, OR PLANTS DETERMINED TO BE RARE, THREATENED, OR ENDANGERED UNDER THE FEDERAL ENDANGERED SPECIES ACT OF 1973, AS SET FORTH IN 16 U.S.C. §§ 1531 THROUGH 1544 AND IN 50 C.F.R. PART 17; AND THE MARYLAND NONGAME AND ENDANGERED SPECIES CONSERVATION ACT, AS SET FORTH IN §§ 10-2A-01, *ET SEQ.* OF THE NATURAL RESOURCES ARTICLE OF THE STATE CODE AND IN COMAR, TITLE 08, SUBTITLE 03, CHAPTER 08;

(2) TREES THAT ARE CHAMPION TREES, PART OF A HISTORIC SITE, OR ASSOCIATED WITH A HISTORIC STRUCTURE; AND

(3) A TREE THAT HAS A DIAMETER MEASURED AT 4.5 FEET ABOVE THE GROUND OF 30 INCHES OR MORE OR THAT IS 75% OR MORE OF THE DIAMETER OF THE CURRENT STATE CHAMPION TREE OF THAT SPECIES.

[[d)] (E) Retention not feasible; afforestation and reforestation; payment to Forest Conservation Fund.

(1) If a developer proposes to MODIFY THE REQUIREMENTS OF § 17-6-303(B) OR TO retain less of the existing forest than is required by the forest conservation thresholds established in § 17-6-306 OF THIS CODE, the developer shall apply TO THE PLANNING AND ZONING OFFICER for a modification of the forest conservation requirements of this subtitle PURSUANT TO § 17-2-108 OF THIS CODE [[and:

(i) demonstrate that there are no available methods or techniques to implement forest retention at the forest conservation threshold;

(ii) demonstrate why priority forests and priority areas, as determined by an evaluation of the forest stand delineation, cannot be retained; and

(iii) describe the areas where afforestation and reforestation will occur, with preference given to replanting in a priority retention area]].

(2) If the [[Office]] PLANNING AND ZONING OFFICER [[determines that retention of existing forest is not feasible]] APPROVES A MODIFICATION PURSUANT TO PARAGRAPH (E)(1), the developer shall provide for afforestation in accordance with § 17-6-305 OF THIS CODE and reforestation in accordance with § 17-6-306 OF THIS CODE.

(3) If the Office of Planning and Zoning determines that neither afforestation nor

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reforestation can reasonably be accomplished, the developer shall make a payment to the County's Forest Conservation Fund as provided in Title 11 before the signing of the proposed record plat for a development involving subdivision or upon the issuance of a grading permit for a development not involving subdivision.

17-6-306. Reforestation.

(a) **Amount required.** The amount of reforestation required under this subtitle shall be determined according to the amount of existing forest cover cleared in relation to the forest conservation threshold for the site. For purposes of this section, the term "site" MEANS ANY LOT OR PARCEL OF LAND, OR COMBINATION OF LOTS OR PARCELS OF LAND, THAT ARE CONTIGUOUS AND BEING DEVELOPED AS PART OF A COMMON SUBDIVISION OR PROJECT, BUT NOT INCLUDING ANY AREA COMPRISING A 100-YEAR FLOODPLAIN [[excludes the 100-year floodplain]]. The forest conservation thresholds are:

- [[(1) for agricultural and resource areas, 50% of the site;
- (2) for medium density residential uses, 25% of the site;
- (3) for institutional development uses, 20% of the site;
- (4) for high density residential uses, 20% of the site;
- (5) for mixed use or planned unit development uses, 15% of the site; and
- (6) for commercial or industrial uses, 15% of the site.]]

<u>LAND USE TYPE</u>	<u>SITE AREA</u>	<u>CONSERVATION THRESHOLD</u>
AGRICULTURAL AND RESOURCE AREAS (UNDEVELOPED AREAS ZONED FOR DENSITIES OF LESS THAN OR EQUAL TO ONE DWELLING UNIT PER FIVE ACRES)	LESS THAN 2 ACRES	50% OF THE SITE
	GREATER THAN OR EQUAL TO 2 ACRES BUT LESS THAN 25 ACRES	58% OF THE SITE
	GREATER THAN OR EQUAL TO 25 ACRES BUT LESS AN 50 ACRES	67% OF THE SITE
	50 ACRES OR MORE	75% OF THE SITE
MEDIUM DENSITY RESIDENTIAL AREAS (AREAS ZONED FOR DENSITIES GREATER THAN ONE DWELLING UNIT PER FIVE ACRES AND LESS THAN OR EQUAL TO ONE DWELLING UNIT PER ACRE, INCLUDING BOTH EXISTING AND PLANNED DEVELOPMENT AND THEIR ASSOCIATED INFRASTRUCTURE, SUCH AS ROADS, UTILITIES, AND WATER AND SEWER SERVICE)	LESS THAN 2 ACRES	25% OF THE SITE
	GREATER THAN OR EQUAL TO 2 ACRES BUT LESS THAN 25 ACRES	40% OF THE SITE
	GREATER THAN OR EQUAL TO 25 ACRES BUT LESS THAN 50 ACRES	55% OF THE SITE

	50 ACRES OR MORE	70% OF THE SITE
INSTITUTIONAL DEVELOPMENT (SCHOOLS, COLLEGES, UNIVERSITIES, MILITARY INSTALLATIONS, TRANSPORTATION FACILITIES, UTILITY AND SEWER PROJECTS, GOVERNMENT OFFICES AND FACILITIES, GOLF COURSES, RECREATION AREAS, PARKS, AND CEMETERIES)	ANY ACREAGE	20% OF THE SITE
HIGH DENSITY RESIDENTIAL (AREAS ZONED FOR DENSITIES GREATER THAN ONE DWELLING UNIT PER ACRE, INCLUDING BOTH EXISTING AND PLANNED DEVELOPMENT AND THEIR ASSOCIATED INFRASTRUCTURE, SUCH AS ROADS, UTILITIES, AND WATER AND SEWER SERVICE)	LESS THAN 2 ACRES	20% OF THE SITE
	GREATER THAN OR EQUAL TO 2 ACRES BUT LESS THAN 25 ACRES	35% OF THE SITE
	GREATER THAN OR EQUAL TO 25 ACRES BUT LESS THAN 50 ACRES	50% OF THE SITE
	50 ACRES OR MORE	65% OF THE SITE
MIXED USE DEVELOPMENT (SINGLE, RELATIVELY HIGH DENSITY DEVELOPMENT PROJECTS, USUALLY COMMERCIAL IN NATURE, WHICH INCLUDE ONE OR MORE TYPES OF USES) OR PLANNED UNIT DEVELOPMENT (DEVELOPMENTS COMPRISING A COMBINATION OF LAND USES OR VARYING INTENSITIES OF THE SAME LAND USE IN ACCORDANCE WITH AN INTEGRATED PLAN THAT PROVIDES FLEXIBILITY IN LAND USE DESIGN APPROVED BY THE LOCAL JURISDICTION WITH AT LEAST 20% OF THE LAND PERMANENTLY DEDICATED TO OPEN SPACE)	LESS THAN 2 ACRES	15% OF THE SITE
	GREATER THAN OR EQUAL TO 2 ACRES BUT LESS THAN 25 ACRES	30% OF THE SITE
	GREATER THAN OR EQUAL TO 25 ACRES BUT LESS THAN 50 ACRES	45% OF THE SITE
	50 ACRES OR MORE	60% OF THE SITE
COMMERCIAL OR INDUSTRIAL DISTRICTS (MANUFACTURING OPERATIONS, OFFICE COMPLEXES, SHOPPING CENTERS, AND OTHER SIMILAR USES AND THEIR ASSOCIATED STORAGE AREAS, YARDS, AND PARKING AREAS)	LESS THAN 2 ACRES	15% OF THE SITE
	GREATER THAN OR EQUAL TO 2 ACRES BUT LESS THAN 25 ACRES	30% OF THE SITE
	GREATER THAN OR EQUAL TO 25 ACRES BUT LESS THAN 50 ACRES	45% OF THE SITE

	50 ACRES OR MORE	60% OF THE SITE

(b) **Clearing above the threshold.** If existing forest cover is cut or cleared and the remaining forest cover is above the forest conservation threshold, the site shall be reforested at a ratio of ~~[[one-fourth]]~~ ONE-HALF acre planted for each acre of forest cover cut or cleared except that each acre of the site remaining in forest cover above the forest conservation threshold shall be a credit against the amount of reforestation required.

TITLE 11. FEES AND SECURITY

SUBTITLE 1. IN GENERAL

17-11-101. Fees and security.

The following fees shall be paid and security given as provided in the following chart, except that fees paid on an application governed by the law as it existed prior to May 12, 2005 shall be credited against the fees in the following chart if the application is withdrawn and a new application is filed under this article:

Category	Fee or Security
Clearing in violation of forest conservation law	[[\$0.80]] \$3.00 per square foot
***	***
Fee for abandonment of forest conservation easement	[[\$0.75]] \$3.00 per square foot of conservation easement abandoned
Fee-in-lieu of planting for land outside the critical area and inside a priority funding area	[[\$0.40]] \$2.50 per square foot or the amount provided in COMAR Title 08, Subtitle 19, Chapter 4, whichever is greater
Fee-in-lieu of planting for land outside the critical area and outside a priority funding area	[[\$0.50]] \$3.00 per square foot or 20% more than the fee-in-lieu for land inside a priority funding area, whichever is greater
Fee-in-lieu of planting for land inside the critical area	[[\$1.50]] \$3.00 per square foot of mitigation required

Fee-in-lieu of planting in the critical area buffer	[[\$1.50]] \$3.00 per square foot

SECTION 3. *And be it further enacted*, That all references in this Ordinance to “the effective date of Bill No. __-19”, or words to that effect, shall, upon codification, be replaced with the actual date on which this Ordinance takes effect under Section 307 of the County Charter as certified by the Administrative Officer to the County Council.

SECTION 4. *And be it further enacted*, That this Ordinance shall take effect 45 days from the date it becomes law.

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August 27, 2019