

(9) Willfully allowing any use not authorized or allowed by this Subtitle to continue for a period of more than thirty (30) days after written notification by the Planning Director that such is a violation of this Subtitle (for purposes of this item, a “use not authorized or allowed by this Subtitle” includes any use that might also constitute a civil zoning violation, other than a civil zoning violation which has not been adjudicated in the District Court after the issuance of a citation and timely notice of intention to stand trial; a person “allows any use” if that person has the power or authority to prohibit such use);

(10) Willfully using any property for any purpose or in any manner that could not be authorized by a building permit or by site plan or subdivision approval and has not been authorized by variance in accordance with the provisions of this Subtitle; or

(11) Willfully misrepresenting to a zoning authority the boundaries of any lot or the location of any existing or proposed structure, or any other physical characteristics of any land or structure that this Subtitle requires to be represented or disclosed (proof of such misrepresentation must include a nonverbal act, such as the submission of a plat or drawing or the exhibition of staking or other physical representation of the location of existing or proposed characteristics).

Subpart 8. Amendments to Subtitle

18-1-215 Scope of Subpart.

(a) In general.

The provisions of this Subtitle and district boundaries reflected in the Zoning Maps may be changed by amendment in accordance with the provisions of this Subpart.

(b) Application of certain provisions.

(1) The provisions of Sections 18-1-217(c) and 18-1-219(a) of this Subtitle do not apply to the following:

(i) Any comprehensive rezoning; and

(ii) Any proposed map amendment recommended by the Planning Commission, if the Planning Commission certifies that:

1. The proposed map amendment is an accurate representation of the zoning classification originally recommended by the Planning Commission and submitted to and considered by the County Commissioners;

2. On the basis of the best information available to it, the Planning Commission believes that the County Commissioners did not intend to change the recommended classification; and

3. The recommended classification was, through clerical error, inaccurately represented on the final plats prepared for the signatures of the County Commissioners at the time of their formal adoption of the provisions of this Subtitle.

(2) Nothing in this Subsection shall be construed to preclude a finding by the County Commissioners that any fact contained in the certification required under the preceding sentence is inaccurate, in which event the proposed map amendment to which such finding relates shall be approved only in accordance with all provisions of this Subpart.

18-1-216 Comprehensive Amendment.

The County Commissioners expressly recognize that sections of the county are changing from a rural to a residential, commercial, industrial or other character. One of the paramount purposes of the Land Use Plan was to anticipate and manage such growth. However, it is inevitable that no plan can achieve absolute perfection or remain everlastingly valid. Therefore, in addition to any other amendments which may be authorized by this Subpart, the County Commissioners anticipate that the Land Use Plan will require comprehensive amendment at least every five (5) years from the date of its adoption or subsequent comprehensive amendment and that the zoning maps must also be comprehensively amended from time to time. It is anticipated that such comprehensive amendments will be made within six (6) months of the adoption of any amendment of the Land Use Plan.

18-1-217 Notice of Hearings.

(a) In general.

Notice of any public hearing required by this Subpart shall be given in the manner provided in this Section.

(b) Advertisement.

(1) Notice of the time and place of a public hearing, together with a summary of the proposed amendment, shall be published in at least one (1) newspaper of general circulation in the county at least once a week for two successive weeks, with the first such publication of notice appearing at least fourteen (14) days prior to the hearing.

(2) Notice of any hearing by the County Commissioners shall include a summary of the recommendations of the Planning Commission.

(c) Posting.

With respect to notices of a proposed map amendment, in addition to the notice required in Subsection (b) of this Section, at least fourteen (14) days prior to the date of the hearing, each lot that would receive a new or different classification by reason of a proposed map amendment shall be posted conspicuously with notice of the time, place and purpose of the public hearing and the present and proposed zoning classifications of the lot.

18-1-218 Proposal of Amendment.

(a) Proposal.

(1) A proposal for a text amendment, other than an amendment to the subdivision regulations, may be initiated by:

(i) Resolution of the County Commissioners;

(ii) Resolution of the Planning Commission; or

(iii) Petition of a property owner or property owners acting as a private citizens' group filed with the County Commissioners.

(2) A proposal to amend the Subdivision Regulations may be initiated only by the Planning Commission.

(3) A proposal for a map amendment may be initiated by:

(i) Resolution of the County Commissioners;

(ii) Resolution of the Planning Commission; or

(iii) Petition of the subject property owner filed with the County Commissioners.

(b) Required referral.

Any proposed amendment that is not initiated by the Planning Commission shall be referred to the Planning Commission for investigation and recommendation.

(c) Filing requirements for petitions for text amendments and map amendments.

Any amendment to this Title, including the Zoning Maps, that is proposed by a subject property owner, a property owner or a group of property owners acting as a private citizens' group shall be filed with the office of the Clerk to the County Commissioners, for consideration by the County Commissioners, only during the first five (5) business days in the month of February and the first five (5) business days in the month of August of each calendar year. Map amendment and text amendment petitions will not be accepted by the Clerk to the County Commissioners at any other time during the year.

18-1-219 Resolutions and Petitions for Map Amendment.

(a) Plats.

(1) A resolution or petition that proposes a map amendment shall be accompanied by a plat that is drawn to a scale of one (1) inch equals fifty (50) feet or one (1) inch equals one hundred (100) feet and contains:

(i) The map, block and parcel numbers of the subject lot(s), as shown on current assessment maps of the State Department of Assessments and Taxation;

(ii) The existing boundaries of each lot that would receive a new or different classification by reason of the proposed map amendment;

(iii) The name, location and width of roads adjoining the subject lot(s);

(iv) The names and addresses of adjoining lot owners, as shown by current assessment records;

(v) The existing zoning classification of the subject lot(s) and each adjoining lot; and

(vi) The proposed zoning classification and its proposed boundaries.

(2) The provisions of this Subsection are not applicable under the circumstances referred to in Section 18-1-215(b) of this Subtitle.

(b) Other lots.

If a petition for a map amendment proposes that any lot, other than a lot owned by the petitioner, receive a new or different classification by reason of the proposed map amendment, the petition shall include evidence that the petitioner has notified the owner(s) of such other lot(s), in writing and within fifteen (15) days prior to the time when the petition is filed, of an intention to file the petition.

(c) Fee.

A petition for a map amendment shall be accompanied by a fee prescribed by the County Commissioners.

18-1-220 Action by Planning Commission.

(a) Consideration.

In considering any proposed amendment, the Planning Commission shall cause such investigation to be made as it deems necessary and for this purpose may require any person concerned to submit pertinent data and information.

(b) Hearing.

Before making any recommendation with respect to an amendment involving comprehensive rezoning or an amendment of the subdivision regulations, the Planning Commission shall hold at least one public hearing.

(c) Report.

(1) The Commission shall submit its report and recommendation to the County Commissioners within ninety (90) days from the date when it receives the proposal, unless an extension of time is granted by the County Commissioners.

(2) The recommendations of the Planning Commission shall include discussion of the matters required to be considered by the County Commissioners.

18-1-221 Consideration by County Commissioners.

(a) Hearing.

(1) After receipt of the recommendations of the Planning Commission, the County Commissioners shall conduct a public hearing with respect to the proposed amendment.

(2) Representatives of the Department of Planning and Zoning and other public agencies, parties in interest, and citizens shall be given an opportunity to be heard.

(3) The County Commissioners shall keep a complete record of the hearing and their votes with respect to the proposed amendment.

(b) Consideration.

(1) The County Commissioners shall evaluate the proposed amendment on the basis of the recommendations of the Planning Commission, the testimony, and other evidence presented at the hearing.

(2) The County Commissioners may not approve any amendment unless it finds that the amendment is consistent with the purposes contained in Article 66B of the Annotated Code of Maryland, in the Comprehensive Plan, and in this Subtitle.

(3) The decision of the County Commissioners shall be in writing and shall include findings, based upon specified facts in the record before the Commissioners, with respect to the matters referred to in Subsection (c) of this Section.

(c) Matters considered.

In addition to other matters pertinent to the proposed amendment, the County Commissioners shall give specific consideration to the following matters:

(1) The purposes set forth in Article 66B of the Annotated Code of Maryland, the Comprehensive Plan, and this Subtitle;

(2) The recommendations of the Planning Commission; and

(3) The relation of the proposed amendment to the Comprehensive Plan.

(d) Referral to Planning Commission.

(1) If the Planning Commission has recommended the adoption of an amendment and the County Commissioners propose to adopt an amendment that changes or departs from those recommendations, the proposal of the County Commissioners shall be referred to the Planning Commission, in writing, for its further recommendations.

(2) If the recommendations are not received by the County Commissioners within thirty (30) days after the proposal has been transmitted to the Planning Commission, the Commissioners may proceed to take final action without the recommendations.

(e) Form of approval.

(1) If the County Commissioners propose to adopt an amendment that is substantially different from both the proposed amendment and the recommendations of the Planning Commission as described in the published notice, a new public hearing shall be held.

(2) Notice of the hearing shall include notice of the amendment as proposed by the County Commissioners and any recommendations of the Planning Commission, including those made after any referral required by Subsection (d) of this Section.

(f) Effective date.

An amendment may not be effective until at least ten (10) days after the date of the public hearing required for its adoption.

18-1-222 Consideration of Map Amendments.

(a) General scope.

The provisions of this Section apply only to map amendments. The findings and considerations required by this Section are supplemental to any other requirements of this Subpart.

(b) Required findings.

Except in connection with any comprehensive rezoning, the County Commissioners may not approve any map amendment unless it is determined, on the basis of specified facts contained in the record before the County Commissioners, that:

(1) Since the adoption of this Subtitle, a substantial change has occurred in the character of the neighborhood where the property is located; or

(2) A mistake was made in the existing zoning classification.

(c) Considerations.

In addition to any other findings required or pertinent with respect to the proposed amendment, the County Commissioners shall make specific findings of fact with respect to:

- (1) Population change;
- (2) Availability of public facilities;
- (3) Present and future public transportation patterns; and
- (4) Compatibility with existing and proposed development for the area.

(d) Map change.

Promptly after the adoption of a map amendment, the Planning Director shall prepare revised copies of the pertinent zoning map(s) for signature by the County Commissioners.

(e) Disapproval.

If the County Commissioners deny or refuse to adopt any proposed map amendment after a hearing, a resolution or petition proposing a map amendment with respect to the whole or any part of the land involved in the first proposal may not be accepted for filing until the expiration of twelve (12) months from the date of the decision of the County Commissioners by which the first proposal was denied or refused.

(f) Comprehensive rezoning.

The County Commissioners may approve map amendments in connection with comprehensive rezoning of the County without the necessity of a substantial change in the character of the neighborhood of properties to be rezoned or a mistake in the existing characterization, provided that the map amendments are consistent with the goals and purposes of the Comprehensive Plan then in effect.

PART VIII. SHORT TITLE

18-1-223 Short Title.

This Subtitle shall be known as and may be referred to as the “2002 Queen Anne’s County Zoning Ordinance and Subdivision Regulations”.

Subtitle 2. Forest Conservation Act

18-2-1 Definitions.

(a) Generally.

In this Subtitle, unless otherwise defined in this Section, words and terms shall have the meaning assigned to them in the Glossary set forth as Appendix A to Title 18.

(b) Additional definitions.

(1) In general.

In this Subtitle the following words have the meanings indicated.

(2) Afforestation.

"Afforestation" means the:

(i) Establishment of a forest on an area from which forest cover has been absent for a long period of time; or

(ii) Planting of trees in an open area that is not presently in forest cover;

(iii) Adding additional tree stock to meet required afforestation thresholds; or

(iv) Establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

(3) Agricultural activity.

(i) "Agricultural activity" means any recognized commercial farming activity related to the cultivating and harvesting of food or fiber products other than commercial logging and timber harvesting operations.

(ii) "Agricultural activity" includes:

1. Plowing, tilling, cropping, seeding, and installation of best management practices;

2. Grazing and raising of livestock;

3. Aquaculture and silviculture;
4. The management of orchards or nurseries;
5. Sod production; and
6. Agricultural support

(4) Agricultural transfer.

"Agricultural transfer" means the transfer of land currently involved in agricultural activities in which the purchaser is willing to promise to keep the land in agricultural use for five (5) full taxable years after the transfer.

(5) Applicant.

"Applicant" means a person who:

(i) Is applying for:

1. Subdivision, site plan, or project plan approval; or
2. A grading or sediment control permit; or

(ii) Has received approval of a forest stand delineation or forest conservation plan.

(6) Approved forest management plan. (see also "forest management plan")

"Approved forest management plan" means a document:

(i) Approved by the Department of Natural Resources forester assigned to the county in which the property is located; and

(ii) That may operate as a protective agreement for forest conservation as described in 5-1607(e) and (f) of the Natural Resources Article, Annotated Code of Maryland.

(7) Building envelope.

"Building envelope" means a portion of a single-family lot that may be disturbed for development and that is not dedicated to agricultural activities.

(8) Caliper.

"Caliper" means the diameter measured two inches above the root collar.

(9) Champion tree.

"Champion tree" means the largest tree of its species within the United States, the State, the County, or a municipal corporation.

(10) Commercial logging or timber harvesting operations.

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

(11) Critical habitat area.

"Critical habitat area" means a critical habitat for endangered species and its surrounding protection area. A critical habitat area shall:

(i) Be likely to contribute to the long-term survival of the species;

(ii) Be likely to be occupied by the species for the foreseeable future; and

(iii) Constitute habitat of the species which is considered critical under 4-2a-06 or 10-2a-06 of the Natural Resources Article, Annotated Code of Maryland.

(12) Critical habitat for endangered species.

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

(13) Declaration of Intent.

"Declaration of Intent" means:

A signed and notarized statement by a landowner or the landowner's agent (when appropriate) certifying that the activity on the landowner's property:

1. Is for certain activities exempted under this Subtitle or Natural Resources Article 5-103 and 5-1601 through 5-1612, Annotated Code of Maryland;

2. Does not circumvent the requirements of this Subtitle or Natural Resources Article 5-103 and 5-1601 through 5-1612, Annotated Code of Maryland; and

3. Does not conflict with the purposes of any other declaration of intent.

(14) Development project.

(i) "Development project" means the grading or construction activities occurring on a tract of land that is 40,000 square feet or more in size.

(ii) "Development project" includes redevelopment.

(15) Development project completion.

"Development project completion" means, for the purposes of afforestation, reforestation, or payment into the Local Conservation Fund:

(i) Designation by the Department that:

1. A development project has been completed; or

2. A particular stage of a staged development project, including a planned unit development has been completed;

(ii) The acceptance by the Department of the streets, utilities, and public services of the project; or

(iii) If a development bond is required, the release of the development bond.

(16) Forest.

(i) "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet (0.23 acres) or more.

(ii) "Forest" includes:

1. Areas that have at least one hundred (100) trees per acre with at least 50% of those trees having a two (2)-inch or greater diameter at 4.5 feet above the ground; and

2. Areas that are being managed under an approved forest management plan but are not clearcut.

(iii) "Forest" does not include orchards, nurseries or Christmas tree farms.

(17) Forest Conservancy District Board.

"Forest Conservancy District Board" means the forestry board created for each State forestry conservancy district as provided in Title 5, Subtitle 6 of the Natural Resources Article, Annotated Code of Maryland.

(18) Forest conservation.

"Forest conservation" means the retention of existing trees or forest or the creation of new forest or planted areas at the conservation or afforestation levels set by the State or by the Department.

(19) Forest conservation and management agreement.

"Forest conservation and management agreement" means an agreement as provided under 8-211 of the Tax - Property Article, Annotated Code of Maryland and COMAR 08.07.03.

(20) Forest conservation plan (FCP).

"Forest conservation plan" (FCP) means a plan approved by the Department.

(21) Forest Conservation Technical Manual.

"Forest Conservation Technical Manual" means the Queen Anne's County Forest Conservation Technical Manual used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

(22) Forest cover.

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

(23) Forest management plan.

"Forest management plan" means a plan that establishes best conservation and management practices to guide a property owner in the assessment of the resource value of the forested property.

(24) Forest mitigation bank.

"Forest mitigation bank" means an area of land which has been intentionally afforested or reforested for the express purpose of meeting reforestation or afforestation requirements.

(25) Forest mitigation bank agreement.

"Forest mitigation bank agreement" means an agreement entered into by an individual owning a forest mitigation bank and the Department which commits the mitigation banker to certain procedures and requirements when creating and operating the forest mitigation bank.

(26) Forest mitigation bank plan.

"Forest mitigation bank plan" means a plan submitted for approval of a forest mitigation bank to the local government by an individual proposing to establish a forest mitigation bank.

(27) Forest stand delineation (FSD).

"Forest stand delineation" (FSD) means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Forest Conservation Technical Manual.

(28) Growing season.

"Growing season" means the period of consecutive frost-free days as stated in the current soil survey for the County published by the National Cooperative Soil Survey Program.

(29) Intermittent stream.

"Intermittent stream" means a stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle maps published by the United States Geological Survey or as confirmed by field verification.

(30) Landscaping plan.

"Landscaping plan" means a plan:

- (i) Drawn to scale, showing dimensions and details for reforesting an area;
- (ii) Using native or indigenous plants when appropriate; and
- (iii) That is made part of an approved forest conservation plan.

(31) Linear project.

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

(32) Local Conservation Fund.

"Local Conservation Fund" means the Queen Anne's County Local Conservation Fund, as provided in Section 18-2-15 of this Subtitle.

(33) Lot.

"Lot" means a unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision without an approved forest stand delineation and forest conservation plan.

(34) Maintenance agreement.

"Maintenance agreement" means a signed, short-term management agreement associated with afforestation or reforestation plans required under this Subtitle and 5-1605 of the Natural Resources Article, Annotated Code of Maryland.

(35) Minor subdivision.

"Minor subdivision" means the division or redivision of land, including the creation of any required easements or rights-of-way, into no more than five (5) lots.

(36) Monoculture.

"Monoculture" means a planting of a single species of trees (usually pine) over a large area.

(37) Natural regeneration.

"Natural regeneration" means the natural establishment of trees and other vegetation with at least four hundred (400) woody, free-to-grow seedlings per acre, that are capable of reaching a height of at least twenty (20) feet at maturity.

(38) Net tract area.

"Net tract area" means:

(i) Except in agricultural activity areas or linear projects areas, the total area of a site, including both forested and nonforested areas, to the nearest one-tenth acre reduced by that area where forest clearing is restricted by another local ordinance or program;

(ii) In agricultural activity areas the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities reduced by that area where forest clearing is restricted by another local ordinance or program;

(iii) Net tract can also be interpreted as the portion of the total tract for which land use will be changed plus all the forested area within the total tract area which is outside of the boundaries of the newly proposed lot.

(iv) For a linear project:

1. The area of a right-of-way width, new access roads and storage; or
2. The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

(39) Nontidal wetlands.

(i) "Nontidal wetlands" means an area that is:

1. Inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and

2. Considered a nontidal wetland in accordance with the publication known as the "federal manual for identifying and delineating jurisdictional wetlands," published in 1987 and as may be amended and interpreted by the u.s. environmental protection agency.

(ii) "Nontidal wetlands" do not include tidal wetlands regulated under Title 16 of the Environment Article, Annotated Code of Maryland.

(40) Off-site.

"Off-site" means the area outside the boundaries of a tract of land.

(41) On-site.

"On-site" means the area within the boundaries of a tract of land, including any area classified as a 100-year floodplain.

(42) 100-year flood.

"100-year flood" means a flood that has a 1% chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed of less than four hundred (400) acres is excluded.

(43) Perennial stream.

"Perennial stream" means a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle maps (scale: 1 to 24,000) published by the United States Geological Survey or as confirmed by field verification.

(44) Person.

"Person" includes an individual, or the federal government, the State, a county, municipal corporation, any other political subdivision of the State, or any of their units.

(45) Reforestation or reforested.

(i) "Reforestation" or "reforested" means the:

1. Creation of a biological community dominated by trees and other woody plants containing at least one hundred (100) live trees per acre with at least 50% of those trees having the potential of attaining a two (2)-inch or greater diameter measured at 4.5 feet above the ground, within seven (7) years; or

2. Establishment of a forest according to procedures set forth in the forest conservation technical manual.

(ii) "Reforestation" or "reforested" includes the landscaping of areas if the landscaping is part of a reforestation plan approved by the Planning Director.

(46) Regulated activity.

"Regulated activity" means any of the following activities when the activity occurs on a unit of land that is 40,000 square feet or more in size:

(i) Subdivision;

(ii) Site plan;

(iii) Grading; or

(iv) An activity that requires a sediment control permit.

(47) Retention.

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

(48) Root collar.

"Root collar " means the transition zone between stem and root at the ground line of a tree or seedling.

(49) Sediment control permit.

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

(50) Seedling.

"Seedling" means an unbranched woody plant, less than twenty-four (24) inches in height and having a caliper of less than 1/2 inch, measured at two (2) inches above the root collar.

(51) Selective clearing.

"Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

(52) Subdivision.

"Subdivision" means any division or redivision of a parcel of land into two (2) or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

(53) Timber harvesting.

(i) "Timber harvesting" means a tree cutting operation affecting one (1) or more acres of forest or developed woodland within a one (1)-year interval that disturbs five thousand (5,000) square feet or more of forest floor.

(ii) "Timber harvesting" does not include grubbing and clearing of root mass.

(54) Tract or Total Tract Area.

"Tract" or "Total Tract Area" means a property or unit of land that:

(i) Is subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to this law;

(ii) "Tract" or "Total Tract Area" may be defined as the area of a master plan, planned unit development, or phased development plan subject to an application for grading or sediment and erosion control plan approval.

(55) Tree.

"Tree" means a large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least twenty (20) feet at maturity.

(56) Variance.

(i) "Variance" means relief from the provisions of this Subtitle or Title 5, Subtitle 16 of the Natural Resources Article, Annotated Code of Maryland.

(ii) "Variance" does not mean a zoning variance.

(57) Watershed.

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

(58) Woody plant.

"Woody plant" means:

(i) A plant with stems and limbs containing lignin, the chief noncarbohydrate constitute of wood; or

(ii) a plant approximately fifteen (15) feet in height or smaller, often formed by a number of vertical or semi-upright branches arising close to the ground; or

(iii) A shrub.

18-2-2 Rules of Interpretation.

In the interpretation of this Subtitle, the provisions and rules in Section 18-1-2 of this Title shall be observed and applied, except when the context clearly requires otherwise.

18-2-3 Purpose.

(a) In general.

The intent of the Queen Anne's County Forest Conservation Program is to ensure that high quality forested areas are retained and appropriate areas afforested by requiring consideration and protection of forest resources early in the design phase of development projects located outside of the Chesapeake Bay Critical Area.

(b) Required under State law.

The regulations in this Subtitle have been developed for the purpose of implementing the Queen Anne's County Forest Conservation Program as required under Title 5, Subtitle 16 of the Natural

Resources Article, Annotated Code of Maryland. The goal of the regulations is to minimize the overall loss of forested areas due to development activities that result in land use change.

18-2-4 Application of Subtitle.

(a) In general.

Except as provided in Subsection (b) of this Section, the regulations set forth in this Subtitle apply to:

(1) A person applying for a major or minor subdivision (other than an administrative subdivision), major or minor site plan, grading permit, or sediment control permit on a tract of land that is 40,000 square feet or greater in size;

(2) A public utility that is not exempt under Subsection (b) of this Section; and

(3) A local government agency, including a public utility or public works project, applying for a major or minor subdivision, (other than an administrative subdivision), major or minor site plan, grading permit, or sediment control permit on tracts of land 40,000 square feet or greater in size.

(b) Exemptions.

The regulations set forth in this Subtitle do not apply to the following:

(1) A highway construction activity that is subject to the requirements of 5-103 of the Natural Resources Article, Annotated Code of Maryland.

(2) Areas governed by the Chesapeake Bay Critical Area Protection Laws, Title 8, Subtitle 18 of the Natural Resources Article, Annotated Code of Maryland.

(3) Commercial logging and timber harvesting operations, including timber harvesting that:

(i) Is subject to the forest conservation and management program under 8-211 of the Tax - Property Article, Annotated Code of Maryland;

(ii) Is completed after January 1, 1991;

(iii) Is conducted on property that is not the subject of an application for a grading permit for development within five years after the logging or harvesting operation; and

(iv) Is the subject of a Declaration of Intent as provided in 18-2-8 of this Subtitle and which includes a sketch map of the property showing the area to be harvested.

(4) Agricultural activities including the construction of agricultural support buildings and other related structures using accepted best management practices, provided that if an activity results in the clearing of 40,000 square feet or more of forest within a one year period. Agricultural activities do not include the construction of a dwelling or the building envelope associated with any newly constructed dwelling on a newly proposed lot. Both a Declaration of Intent as provided in Section 18-2-8 of this Subtitle and a sketch map of the property which shows the area to be cleared are required.

(5) The cutting or clearing of public utility rights-of-way for the construction of generating stations or overhead transmission lines as provided in 54A and 54B of Article 78, Annotated Code of Maryland, or for the modification of electric generating stations as provided in 54-I of Article 78, Annotated Code of Maryland, provided that:

(i) Required certificates of public convenience and necessity have been issued in accordance with 54A and 54B or 54-I of Article 78, Annotated Code of Maryland; and

(ii) Cutting and clearing of the forest is conducted to minimize the loss of forest.

(6) Routine maintenance or emergency repairs of rights-of-way by a public utility that is licensed under Article 78, Annotated Code of Maryland.

(7) Except for a public utility subject to item (6) of this Subsection, routine maintenance or emergency repairs of a public utility right-of-way if:

(i) The right-of-way existed before the effective date of these regulations; or

(ii) The right-of-way's initial construction was approved under these regulations.

(8) Residential construction activity conducted on an existing single lot of any size or a linear project not otherwise exempted from (5), (6) or (7) provided that the activity does not result in:

(i) The cumulative cutting, clearing, or grading of more than 40,000 square feet of forest in a five (5)-year period;

(ii) The cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this Subtitle.

(9) Strip mining or deep mining of coal regulated under Title 15, Subtitles 5 and 6 of the Environment Article, Annotated Code of Maryland.

(10) Noncoal surface mining regulated under Title 15, Subtitle 8 of the Environment Article, Annotated Code of Maryland.

(11) An activity required for the purpose of constructing a dwelling intended for the use and occupation of the owner, a child grandchild, step-child, brother, sister, step-brother, step-sister, aunt, uncle, niece, nephew of the owner, or a parent, step-parent, or grandparent of the owner, provided that the activity:

(i) Does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest;

(ii) Is the subject of a Declaration of Intent as provided in section 18-2-8 of this Subtitle, which states that transfer of ownership may result in the loss of the exemption; and

(iii) Is conducted in accordance with Subtitle 1 of this Title;

(12) A subdivision that has received preliminary approval of a grading or sediment control plan before January 1, 1991.

(13) Any minor subdivision that:

(i) Does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest;

(ii) Does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this Subtitle; and

(iii) Meets minimum afforestation threshold requirements and protects the minimum afforestation threshold requirements through protective signage and long-term protective agreements.

(14) An administrative subdivision, an agricultural transfer, a title transfer, or other real estate transfer to provide security, a leasehold, or other legal or equitable interest, provided that:

(i) The transfer does not involve a change in land use or new development or redevelopment with associated land disturbance activities; and

(ii) The transfer is allowed under Subtitle 1 of this Title.

(15) Land surveys involving limited clearing necessary for the location of property lines or other points necessary for the preparation of submittal material.

18-2-5 Amendments to Regulations.

(a) Approval by Department of Natural Resources.

The regulations in this Subtitle may be amended as required. All amendments to the regulations are subject to the approval of the Department of Natural Resources.

(b) Procedure.

(1) The following procedure is established for the submission, review, and approval of amendments to these regulations.

(2) The Department, either on its own initiative or at the request of a third person, may develop amendments to the regulations. A proposed amendment shall be submitted by the Department to the Planning Commission for their review at their regularly scheduled monthly public meeting.

(3) The Planning Commission shall develop a recommendation on the amendment.

(i) The Planning Commission shall recommend approval only if the amendment complies with the intent of the State forest conservation laws, Title 5, Subtitle 16 of the Natural Resources Article, Annotated Code of Maryland.

(ii) Upon a favorable recommendation, the amendment shall be submitted to the Forestry Division of the Department of Natural Resources for their review and approval.

(iii) Upon approval by the Forestry Division of the Department of Natural Resources, the amendment shall be submitted to the County Commissioners for adoption. The proposed amendment shall be advertised in accordance with the current procedures for amendments to Subtitle 1 of this Title. The County Commissioners shall provide concerned persons an opportunity to make comments on the amendment at a regularly scheduled public meeting. If additional changes to the Department of Natural Resources approved amendment are requested by the County Commissioners, those changes must also be approved by the Department of Natural Resources prior to adoption.

18-2-6 Qualified Professionals.

An individual may be approved by the Department as a qualified professional if the individual is approved as a qualified professional by the Department of Natural Resources.

18-2-7 General Requirements.

(a) Forest conservation plan.

Unless exempt under Section 18-2-4(b) of this Subtitle, a person that makes an application for subdivision, site plan, a grading permit, or a sediment control permit for a tract of land of 40,000 square feet or more shall:

(1) Submit to the Department a forest stand delineation (FSD) and a forest conservation plan (FCP), as provided in the Forest Conservation Technical Manual, for the lot or parcel on which the development is located; and

(2) Use methods approved by the Department, as provided in the Forest Conservation Technical Manual, to protect retained forests and trees during construction.

(b) Local government agency.

If a local government agency or person using State funds makes an application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D through G apply.

18-2-8 Declaration of Intent

(a) Purpose.

The purpose of the Declaration of Intent is to verify that certain proposed activities are exempt from this Subtitle.

(b) Statement required.

A Declaration of Intent is required for exempted activities described in Sections 18-2-4(b)(3), (4), and (11) of this Subtitle.

(c) Commercial logging.

A person seeking an exemption for commercial logging and timber harvesting activities described in Section 18-2-4(b)(3) of this Subtitle shall file a Declaration of Intent with:

(1) The Department; and

(2) The local Bay Watershed Forester.

(d) Agricultural activities.

A person seeking an exemption for agricultural activities described in Section 18-2-4(b)(4) of this Subtitle shall file a Declaration of Intent with:

(1) The Department; and

(2) The Queen Anne's County Soil Conservation District.

(e) Intrafamily Transfer.

A person seeking an exemption for intrafamily transfer as described in Section 18-2-4(b)(11) of this Subtitle shall file a Declaration of Intent with the Department.

(f) Period of effectiveness.

A Declaration of Intent is effective for five (5) years.

(g) Contents of statement for commercial logging and agricultural activities.

The Declaration of Intent shall stipulate that the clearing of forest is exclusively related to exempted agricultural or commercial logging and timber harvesting activities and that any future activity on the site within five (5) years that is not related to exempted agriculture or commercial logging and timber harvesting activities shall be conducted in full compliance with the provisions of this Subtitle.

(h) Contents of statement intrafamily transfer.

The Declaration of Intent shall stipulate that the intrafamily transfer is for the express purpose of constructing a dwelling for the use and occupation of the owner, a child or a grandchild, step-child, brother, sister, step-brother, step-sister, aunt, uncle, niece, nephew of the owner, or a parent, step-parent, or grandparent of the owner and shall identify that specific relationship between current owner and future owner of the newly created lot. The Declaration shall also stipulate that no more than 40,000 square feet of forest will be cut, cleared, or graded and that any and all activity occurring on site will be conducted in accordance with Subtitle 1.

(i) Enforcement.

Failure to file a Declaration of Intent or violation of the terms of the Declaration of Intent may result in enforcement actions and penalties as provided in Section 18-2-24 of this Subtitle.

18-2-9 Forest Stand Delineation (FSD).

(a) In general.

A forest stand delineation (FSD) shall be submitted according to the schedule set forth in the Forest Conservation Technical Manual for all regulated activities that are not exempt under Section 18-2-4(b) of this Subtitle.

(b) Preparation.

The FSD shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements provided in Section 18-2-6 of this Subtitle.

(c) Standard FSD -- Timing and contents.

(1) A standard FSD shall be submitted prior to or during the initial stages of subdivision, site plan, before a grading permit application or before a sediment control application is approved for the tract being developed as scheduled in the Forest Conservation Technical Manual in order to determine the most suitable and practical areas for forest conservation.

(2) The FSD shall contain the information required by the Forest Conservation Technical Manual and any other information the Department determines is necessary to implement this Subtitle.

(d) Simplified FSD.

A simplified FSD may be submitted for projects not otherwise exempt when no forest currently exists on site or when no forest cover will be disturbed during a construction activity and is designated to be under a long-term protective agreement. The simplified FSD shall contain the information required by the Forest Conservation Technical Manual and any other information the Department determines is necessary to implement this Subtitle. A simplified FSD may be submitted with a forest conservation plan and both may be placed on a single plat page, when appropriate.

(e) Period of effectiveness.

An approved FSD shall remain in effect for a period not longer than five (5) years.

(f) Timing of review.

(1) Within thirty (30) calendar days after receipt of the FSD, the Department shall notify the applicant whether the FSD is complete and correct.

(2) If the Department fails to notify the applicant within thirty (30) days, the FSD shall be treated as complete and correct.

(3) The Department may require further information or extend the deadline for an additional fifteen (15) calendar days under extenuating circumstances, in which case the Department shall notify the applicant at least five (5) days prior to the end of the thirty (30)-day deadline.

18-2-10 Forest Conservation Plan (FCP).

(a) In general.

(1) In developing a forest conservation plan (FCP), the applicant shall give priority to techniques for retaining existing forest on the site.

(2) If existing forest on a site that is subject to an FCP cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:

(i) How techniques for forest retention have been exhausted;

(ii) Why the priority forests and priority areas specified in Section 18-2-11 of this Subtitle cannot be left in an undisturbed condition;

(iii) If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Sections 18-2-12 through 18-2-14 of this Subtitle; and

(iv) Where on the site in priority areas afforestation or reforestation will occur in compliance with Sections 18-2-11 and 18-2-12 of this Subtitle.

(3) If the applicant proposes to make a fee-in-lieu payment into the Local Conservation Fund or to purchase credits from a forest mitigation bank, the applicant shall demonstrate to the satisfaction of the Department that the requirements for afforestation or reforestation on-site or off-site cannot be reasonably accomplished. Fee-in-lieu payment into the Local Conservation Fund or the purchase of credits from a forest mitigation bank may be used in very limited instances, to be determined by the Planning Director on a case-by-case basis in accordance with Section 18-2-15 of this Subtitle.

(4) Wetlands.

(i) A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Title 5, Subtitle 9 of the Environment Article, Annotated Code of Maryland and COMAR 08.05.04 is subject to the nontidal wetlands regulatory requirements, the requirements of this Subtitle, and conditioned on the following.

(ii) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted towards forest conservation requirements under this Subtitle.

(iii) Nontidal wetlands and their buffers shall be considered to be priority areas for retention and replacement.

(iv) For the purpose of calculating reforestation mitigation under this Subtitle, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 shall be:

1. Shown on the FCP; and

2. Subtracted on an acre-for-acre basis to the nearest 1/10 of an acre from the total amount of forest to be cut or cleared as part of a regulated activity.

(v) Forested nontidal wetland identification and delineation shall be included at the earliest stage of planning in order to:

1. Assist the applicant in avoiding and reducing impacts to the nontidal wetlands;
- and
2. Avoid delay in the approval process.

(b) Guidelines for plan.

(1) A FCP shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements provided in Section 18-2-6 of this Subtitle.

(2) A FCP shall:

(i) Be prepared in accordance with the guidelines established in the Forest Conservation Technical Manual;

(ii) Be submitted with the preliminary plat for subdivision, site plan, an application for grading permit, or an application for a sediment control permit.

(iii) Include an explanation of how the provisions of Subsection (a) of this Section have been met;

(iv) Include information required in the Forest Conservation Technical Manual; and

(v) Include other information the Department determines is necessary to implement this Subtitle.

(3) The review of the FCP shall be concurrent with the review of the major subdivision plat, site plan, application for grading permit, or application for a sediment control permit.

(4) Modifications.

(i) During the different stages of the review process, the FCP may be modified, provided the Department approves of the changes.

(ii) Modifications affecting less than 40,000 square feet of forest may be submitted as amendments.

(iii) When modification to more than 40,000 square feet of forest is proposed, a new plan is required.

(iv) Modifications shall be reviewed by the Department for consistency with the intent and requirements of this Subtitle.

(5) Notification deadline or failure to notify.

(i) Within forty-five (45) calendar days after receipt of the final FCP, the Department shall notify the applicant whether the FCP is complete and approved.

(ii) If the Department fails to notify the applicant within forty-five (45) calendar days, the plan shall be treated as complete and approved.

(iii) The Department may require further information or extend the deadline for an additional fifteen (15) calendar days under extenuating circumstances, in which case the Department shall notify the applicant of the necessary extension at least five (5) days prior to the end of the forty-five (45)-day deadline.

(iv) At the request of the applicant, the Department may extend the deadline under extenuating circumstances.

(6) The Department may revoke an approved FCP if the Department finds that:

(i) A provision of the FCP has been violated;

(ii) Approval of the FCP was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or

(iii) Changes in the development or in the condition of the site necessitate preparation of a new or amended FCP.

(7) The Department may issue a stop work order against a person who violates a provision of this Subtitle or a regulation, order, approved forest conservation plan, or maintenance agreement.

18-2-11 Retention Requirements.

The following specific areas are considered priority protection areas and shall be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department

that reasonable efforts have been made to protect the areas and the forest conservation plan for that regulated activity cannot be reasonably altered.

(1) Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial stream buffers, steep slopes, nontidal wetlands, and critical habitats.

(2) Contiguous forest that connects with the largest undeveloped or more vegetated tracts of land within and adjacent to the site.

(3) Trees, shrubs, or plants determined to be rare, threatened, or endangered under:

(i) The federal endangered species act of 1973, 16 U.S.C. 1531 through 1544, and 50 cfr part 17;

(ii) The Maryland nongame and endangered species conservation act, Title 10, Subtitle 2a of the natural resources article, annotated code of Maryland; or

(iii) COMAR 08.03.08.

(4) Trees that:

(i) Are part of a registered historic site;

(ii) Are associated with a registered historic structure; or

(iii) Have been designated by the state or the department as a champion tree.

(5) Any tree, provided that it does not pose an immediate hazard due to disease, insect infestation, or structural limitations, that has a diameter measured at 4 1/2 feet above the ground of:

(i) Thirty (30) inches or more; or

(ii) Seventy-five percent (75%) or more of the diameter, measured at 4½ feet above the ground, of the current champion tree of the State of the same species.

(6) Areas classified as having priority forest structure by the forest structure analysis methodology as described in the Forest Conservation Technical Manual.

18-2-12 Afforestation Requirements.

(a) General requirements.

(1) An applicant for any development activity that is not exempt from this Subtitle shall conduct afforestation on the lot or parcel in accordance with this Subsection.

(2) A tract that has less than 20% of its net tract area in forest cover shall be afforested up to at least 20% of the net tract area for the following land use categories and zoning districts.

(i) Agriculture and resource areas (AG and CS zoning districts); and

(ii) Medium density residential areas (E, SE, NC-1, NC-2, and NC-5 zoning districts).

(3) A tract that has less than 15% of its net tract area in forest cover shall be afforested up to at least 15% of the net tract area for the following land use categories and zoning districts:

(i) Institutional development areas (all zoning districts);

(ii) High density residential areas (SR, UR, NC-8, NC-15, NC-20, and GPRN districts);

(iii) Mixed use and planned development areas (VC, CMPD, TC, SMPD, SHVC, GNC, GVC, QMPD, and QRD districts); and

(iv) Commercial and industrial use areas (SC, UC, SILIHS, SIBE, and AD districts).

(4) An applicant may not propose afforestation on newly created cluster lots.

(5) An applicant must make every reasonable effort to place afforestation on a single lot.

(6) Monocultures are not permitted when afforestation requirements dictate the planting of 1 or more acres of forest.

(b) Requirements -- Special circumstances.

(1) When cutting into forest cover that is currently below the afforestation percentages described in Subsection (a) of this Section, the applicant shall comply with the requirements set forth in this Subsection.

(2) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins.

(3) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a two to one ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

18-2-13 Reforestation Requirements.

(a) General requirements.

(1) After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision plan, site plan, grading and sediment control activities, and implementation of the FCP, the FCP shall provide for:

(i) Reforestation in accordance with this Section and consistent with the approved FCP; or

(ii) Payment into the Local Conservation Fund in accordance with Section 18-2-15 of this Subtitle or payment into an established, local forest mitigation bank in accordance with Section 18-2-16 of this Subtitle.

(2) The following forest conservation thresholds are to be used for the applicable zoning districts:

ZONING DISTRICT	CONSERVATION THRESHOLD PERCENTAGE
AG, CS	50%
E, SE, NC-1, NC-2, NC-5	25%
SR, UR, NC-8, NC-15, NC-20, VC, GPRN, CMPD, TC, SMPD, SHVC, GNC, GVC, QMPD, QRD	20%
SC, UC, SI, LIHS, AD, SIBE	15%
Institutional Use in any Zoning District	20%

(b) Calculations.

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

(2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited towards the total number of acres required to be reforested under paragraph (1) of this Subsection. The calculation of the credit shall be made in accordance with the criteria provided in the Forest Conservation Technical Manual.

(3) For all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two (2) acres planted for each acre removed below the threshold.

18-2-14 Priorities and Timing-Afforestation and Reforestation.

(a) Sequence.

After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Department, is as follows:

- (1) Selective clearing and supplemental planting on-site;
- (2) On-site afforestation or reforestation using transplanted or nursery stock that has a caliper greater than 1½ inches;
- (3) On-site afforestation or reforestation using whip and seedling stock as provided in the forest conservation technical manual;
- (4) For reforestation only, landscaping of areas under an approved landscaping plan that establishes a community dominated by trees and other woody plants that is at least thirty-five (35) feet wide and covers 2,500 square feet or more of area;
- (5) Off-site afforestation or reforestation within the same watershed, using transplanted or nursery stock that has a caliper greater than 1½ inches;
- (6) Off-site afforestation or reforestation within the same watershed, using whip and seedling stock as provided in the forest conservation technical manual;
- (7) Off-site afforestation or reforestation may include the use of forest mitigation banks which have been so designated by the department in advance;
- (8) Natural regeneration on-site in limited instances as provided in the forest conservation technical manual; and
- (9) Natural regeneration off-site in limited instances as provided in the forest conservation technical manual.

(b) Same -- Exceptions.

A sequence other than the one described in Subsection (a) of this Section may be used for a specific project, if approved by the Department, to:

- (1) Achieve the objectives of the County land use plan or County land use policies; or
- (2) Take advantage of opportunities to consolidate forest conservation efforts.

(c) Priority areas.

The following are considered a priority for afforestation and reforestation.

(1) To establish or enhance forest buffers adjacent to intermittent streams to widths of at least fifty (50) feet and those adjacent to perennial streams to widths of at least one hundred (100) feet.

(2) To establish or increase existing forested corridors to a minimum of three hundred (300) feet where practical in order to connect existing forests within or adjacent to the site and to facilitate wildlife movement.

(3) To establish or enhance forest buffers adjacent to critical habitats where appropriate.

(4) To establish or enhance forested areas on one hundred (100)-year floodplains, when appropriate.

(5) To establish plantings to stabilize slopes, including the slopes of ravines or other natural depressions, on:

(i) Slopes of 25% or greater; and

(ii) Slopes of 15% or greater if the slope has a soil k value greater than 0.35.

(6) To establish buffers:

(i) Between areas of differing land use when appropriate; or

(ii) Adjacent to highways or utility rights-of-way.

(7) To establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

(8) To use native plant materials for afforestation or reforestation, when appropriate.

(d) Time period for accomplishing afforestation or reforestation.

(1) A person required to conduct afforestation or reforestation under this Subtitle shall accomplish the afforestation or reforestation within one (1) year or two (2) growing seasons, whichever is a greater time period, following:

(i) Recordation of the approved subdivision plan; or

(ii) Final approval of other regulated activities.

(2) Where subdivision plans are recorded in sections, a schedule shall be agreed upon if all afforestation or reforestation cannot be accomplished at the time of recordation of the first section. The schedule may involve a prorated amount of reforestation or afforestation in accordance with the time limits specified in paragraph (1) of this Subsection based on the acreage of the section recorded.

18-2-15 Local Conservation Fund: Fee-In-Lieu.

(a) Establishment of Fund.

There is established a Queen Anne's County Local Conservation Fund.

(b) General requirements.

(1) If a person subject to the regulations in this Subtitle demonstrates to the satisfaction of the Planning Director that requirements for afforestation or reforestation on-site or off-site (including payment into a forest mitigation bank) cannot be reasonably accomplished, the person shall contribute a payment into the Local Conservation Fund in lieu of the afforestation or reforestation.

(2) The payment shall be 10 cents per square foot of the area of required planting.

(c) Timing of payment.

Payments contributed into the Local Conservation Fund shall be paid prior to subdivision recordation or issuance of any required permit.

(d) Timing of afforestation or reforestation.

The County shall accomplish the afforestation or reforestation for which a payment is contributed into the Local Conservation Fund within two (2) years or three (3) growing seasons, whichever is the greater time period, after receipt of the payment.

(e) Refund of payment.

(1) Payments contributed into the Local Conservation Fund shall remain in the Local Conservation Fund for a period of two (2) years or three (3) growing seasons, whichever is the greater time period.

(2) At the end of that time, any funds that have not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the payments.

(3) If after approval of the subdivision or project plan or the receipt of a grading permit or sediment control permit, the applicant proposes off-site or on-site mitigation and has already made payment for fee-in-lieu, the fee-in-lieu payment may be refunded up to six (6) months after it has been received. After six (6) months, a request for refund is not permitted unless the funds

remain unused for a period of two years or three growing seasons, whichever is the greater time period.

(f) Use of funds.

Payments contributed into the Local Conservation Fund:

(1) May be spent on the costs directly related to afforestation or reforestation, including site identification, acquisition, and preparation;

(2) Shall be deposited in a separate dedicated funds account; and

(3) May not be reverted to the county general fund.

(g) Location of afforestation or reforestation.

(1) Except as provided in paragraph (2) of this Subsection, the afforestation or reforestation requirements under this Section shall occur in the county and watershed in which the project is located.

(2) If the afforestation or reforestation cannot be reasonably accomplished in the county and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the state in which the project is located.

18-2-16 Payments by Credits Into an Approved Forest Mitigation Bank.

(a) Use of available forest mitigation bank.

(1) If a person subject to this Subtitle demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person may contribute credits from an available and approved forest mitigation bank within Queen Anne's County. A credit is required for each tenth (1/10) of an acre of an area of required planting.

(2) The credits shall be debited from an available and approved forest mitigation bank prior to subdivision recordation or issuance of any required permit.

(b) Establishing forest mitigation banks on vacant land.

(1) A person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this Subtitle.

(2) The forest mitigation bank shall:

(i) Afforest or reforest an area of land in accordance with a forest mitigation bank agreement.

(ii) Be protected by an easement, deed restrictions, or covenants which require the land in the bank to remain forested in perpetuity and are enforceable by the Department and the Department of Natural Resources.

(iii) Limit the use of the land in the bank to those activities which are not inconsistent with forest conservation such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article, 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department.

(iv) Clearcutting will not be permitted in a forest mitigation bank.

(c) Planting requirements for banks being created on vacant land.

(1) Banks shall be a mix of native plant materials for afforestation or reforestation. As much as possible, plant material shall be nursery or transplanted stock that has a caliper greater than 1 1/2 inches. Monocultures are not permitted; and

(2) Trees shall be planted that establish or enhance forested buffers adjacent to intermittent streams, establishing a buffer width of no less than fifty (50) feet or adjacent to perennial streams, establishing a buffer width of no less than one hundred (100) feet; or

(3) The bank shall establish or increase existing forested corridors, which, where practical, should be a minimum of three hundred (300) feet in width to facilitate wildlife movement and to connect existing forests within or adjacent to the site; or

(4) The bank shall establish or enhance forest buffers adjacent to critical habitats where appropriate; or

(5) The bank shall establish or enhance areas in one hundred (100)-year floodplains; or

(6) The bank shall stabilize slopes of twenty-five (25) percent or greater; or

(7) The bank shall stabilize slopes of fifteen (15) percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions; or

(8) The bank shall establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-ways; or

(9) The bank shall establish forest areas adjacent to existing forest to increase the overall area of contiguous forest cover, when appropriate.

(d) Establishing forest mitigation banks on existing forested properties.

(1) A person may create a forest mitigation bank on existing forest from which applicants may purchase credits to meet the afforestation and reforestation requirements of this Subtitle.

(2) The forest mitigation bank shall:

(i) Be in accordance with a forest mitigation bank agreement.

(ii) Be protected by an easement, deed restrictions, or covenants which require the land in the bank to remain forested in perpetuity and are enforceable by the Department and the Department of Natural Resources.

(iii) Limit the use of the land in the bank to those activities which are not inconsistent with forest conservation such as recreational activities, forest management under a forest conservation and management program under Tax-Property Article, 8-211, Annotated Code of Maryland, or activities specified in a forest management plan prepared by a licensed forester and approved by the Department.

(iv) Clearcutting will not be permitted in a forest mitigation bank.

(e) Plant and location requirements for a proposed mitigation bank on existing forested properties.

(1) Banks shall contain a mix of native plant materials. As much as possible, plant material shall have a caliper greater than 1 1/2 inches. Monocultures are not permitted; and

(2) The bank shall be located in an area that will enhance forested buffers adjacent to intermittent streams, establishing a buffer width of no less than fifty (50) feet or adjacent to perennial streams, establishing a buffer width of no less than one hundred (100) feet; or

(3) The bank shall be located in existing forested corridors, which, where possible, should be a minimum of three hundred (300) feet in width to facilitate wildlife movement and to connect existing forests within or adjacent to the site; or

(4) The bank shall be located in an area that will enhance forest buffers adjacent to critical habitats where appropriate; or

(5) The bank shall be located in an area that will enhance areas in one hundred (100)-year floodplains; or

(6) The bank shall be located in an area that will stabilize slopes of 25% or greater; or

(7) The bank shall be located in an area that will stabilize slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions; or

(8) The bank shall be located in an area that will establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-ways; or

(9) The bank shall be located in an area that will establish forest areas adjacent to existing forest to increase the overall area of contiguous forest cover, when appropriate.

(f) A person proposing to create a forest mitigation bank shall submit the following:

(1) Completed application on a form approved by the Department which has been signed by an authorized individual in conformance with COMAR 08.19.04.02I.

(2) Forest mitigation bank plan which contains the following:

(i) A Forest Stand Delineation which meets the requirements contained in Section .

(ii) For banks being created on vacant land, a detailed afforestation or reforestation plan shall be submitted, which shall include a timetable and description of the site and soil preparation needed, species, size, and spacing to be utilized. This plan must be prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

(iii) Copy of the deed to the property.

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

(v) A title report or other assurances that the property is not encumbered by any covenants or other types of restrictions which would impair the property's use as a forest mitigation bank and there is legally sufficient access to the forest mitigation bank site which can be used by the Department and its assignees to inspect the forest mitigation bank.

(vi) A description of the system to be used by the person owning and operating the forest mitigation bank to identify and keep track of which portions of the bank have been debited to meet an applicant's offsite afforestation and reforestation requirements.

(g) Two (2)-Year Maintenance Agreement for banks being created on vacant land.

(1) The applicant proposing a forest mitigation bank shall provide a signed, two (2)-year maintenance agreement which addresses the following:

(i) Sets forth how the areas afforested or reforested will be maintained to ensure protection and satisfactory establishment

(ii) Includes watering and reinforcement planting provisions if survival falls below required standards.

(iii) Addresses the requirements for a two (2)-year maintenance agreement as outline in the Forest Conservation Technical Manual.

(h) Agreement with the Department.

(1) The owner of an approved forest mitigation bank shall enter into an agreement with the Department. The agreement shall contain the following:

(i) The approved reforestation or afforestation plan.

(ii) The approved system for marking and tracking which portions of the bank have been debited.

(iii) An acknowledgement that the bank may not debit any portion of the afforested or reforested land until two (2) years of successful growth has been achieved (confirmed by the Department) unless the banker has planted 25% more area than the area of the debited tract and posted a bond or alternate form of security.

18-2-17 Native Tree Species.

(a) General requirements.

Tree species used for afforestation or reforestation shall be native to the County, when appropriate, and selected from a list of approved species established by the Department or as approved by the Planning Director.

(b) Exceptions.

This Section does not in any way prohibit the use of nonnative species for ornamental and landscaping purposes when the nonnative plantings are in addition to the required reforestation or afforestation. The Department may prohibit the use of species identified as invasive and/or exotic and listed in the Forest Conservation Technical Manual.

18-2-18 Financial Security.

(a) Financial security required.

(1) A person, other than a federal, State, or County agency, required under this Subtitle to conduct afforestation or reforestation or to contribute to the Local Conservation Fund shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Department and as set forth in Sections 18-1-193 through 18-1-203 of this Title.

(2) The surety shall assure that the afforestation, reforestation, and the associated management agreement are conducted and maintained in accordance with the approved forest conservation plan.

(3) The surety shall be determined in the following manner:

(i) For cash deposits or letters of credit—Cost of plant material multiplied by three (3). This number is then multiplied by 110%.

(ii) For bonds—Cost of plant material multiplied by three (3). This number is then multiplied by 125%.

(4) The surety shall be in a form and of a content approved by the Department.

(5) The surety calculations shall be placed on the Forest Conservation Plan.

(b) Release of financial security.

(1) If the plantings associated with the afforestation or reforestation meet or exceed the standards of this Subtitle and the Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.

(2) The bond shall be released on receipt of written notice from the Department stating that:

(i) All afforestation or reforestation requirements have been met; and

(ii) The area of the project is subject to a long-term management agreement.

(c) Forfeiture of financial security.

(1) Forfeiture of the bond or other financial security may be required if the obligee fails to comply with:

(i) Revocation of the forest conservation plan;

(ii) An administrative order; or

(iii) An element of the afforestation or reforestation plan.

(2) The Department shall notify the obligee, by certified mail, of the intention of the Department to initiate forfeiture proceedings.

(3) The obligee has thirty (30) days from receipt of the notice of forfeiture to show cause why the bond or other financial security may not be forfeited.

(4) If the obligee fails to show cause, the bond or other financial security shall be forfeited.

(5) The Department shall submit forfeited financial security to the Local Conservation Fund.

18-2-19 Protective Agreements.

(a) In general.

(1) Long-term protective agreements are legally binding devices in effect at all times that will ensure those areas retained, afforested, and/or reforested are limited to uses that are consistent with forest conservation.

(2) Protective agreements include:

(i) Forest conservation and management agreements;

1. Long-term protective agreements associated with a subdivision or site plan shall not permit clearcutting of existing or proposed forest which is protected under the agreement.

2. Existing or proposed forest, protected under a long-term protective agreement and located in deed restricted open space, shall only be permitted to be harvested as a selective cut as outlined under a forest management plan which has been prepared by a licensed, professional forester and approved by the Department of Natural Resources Forester.

(ii) Other legally binding protective agreements, including:

1. Covenants running with the land;

2. Deed restrictions;

3. Conservation easements;

4. Land trusts; and

5. Other long-term protective measures that are approved by the department; and

(iii) Approved forest management plans that:

1. Are prepared by a licensed forester in accordance with the requirements for a forest management plan found in the forest conservation technical manual; and

2. Meet the requirements of Subsection (b) of this Section.

(b) Forest management plans.

(1) A forest management plan:

(i) Shall be legally binding from the date of approval;

(ii) Shall be prepared by a licensed professional forester;

(iii) Shall be submitted to the department of natural resources forester assigned to the county where the property is located; and

(iv) May be amended periodically, as provided in paragraph (4) of this Subsection, if there is a change in site conditions or landowner objectives.

(2) The Department of Natural Resources Forester shall review the plan to ensure that it is complete and consistent with the local forest conservation program.

(3) The Department shall notify the applicant whether the forest management plan has been approved.

(4) Amendment to an approved forest management plan shall comply with the following procedure:

(i) Amendments shall be prepared by a licensed professional forester;

(ii) The amendment shall be submitted to the department of natural resources forester assigned to the county where the property is located;

(iii) The department of natural resources forester shall review the amendment to ensure that it is complete and consistent with the state forest conservation program or this Subtitle;

(iv) The department shall notify the applicant as to whether the amendment has been approved; and

(v) Once approved, the applicant shall sign the amendment.

18-2-20 Standards for Protecting Trees.

(a) Protective devices.

The County has adopted standards for the protection of trees from construction activity. These devices and procedures are defined and described in the Forest Conservation Technical Manual.

(b) General requirements.

Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required and prior to the issuance of any grading permit or sediment and erosion control permit, the applicant shall demonstrate to the Department that protective devices have been established.

18-2-21 Administrative variances.

(a) When available.

A person may request an administrative variance from the regulations in this Subtitle if the person demonstrates that enforcement would result in practical difficulty or unwarranted hardship.

(b) Procedure.

(1) An applicant for a variance shall:

(i) Describe the special conditions peculiar to the property that would cause the practical difficulty or unwarranted hardship;

(ii) Describe how enforcement of the regulations in this Subtitle would deprive the applicant of rights commonly enjoyed by others in similar surrounding areas;

(iii) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;

(iv) Verify that the variance request is not based on conditions or circumstances that are the result of actions by the applicant;

(v) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and

(vi) Verify that the granting of a variance will not adversely affect water quality.

(2) Within forty-five (45) days after receipt of a request for an administrative variance, the Department shall:

(i) Make its findings as to whether to grant or deny the variance; and

(ii) Issue a written statement as to whether or not the applicant has met the requirements set forth in paragraph (1) of this Subsection.

(3) An appeal of the Department's decision shall be filed with the Board of Appeals within thirty (30) days after the signing of the Department's decision. The appeals process and requirements shall conform to the requirements set forth in Subtitle 1, Part VII of this Title.

(4) Notice of a request for an administrative variance or of an appeal shall be given to the Department of Natural Resources within fifteen (15) days of receipt of a request for an administrative variance or appeal.

(c) Authority of Department of Natural Resources.

The Department of Natural Resources has the right and authority to initiate or intervene in an administrative, judicial, or other original proceeding or appeal brought in the State concerning an approval or an appeal of an administrative variance under this Section.

18-2-22 Inspections.

The Department or its agent may conduct a field inspection of a site:

(1) Following the submittal of a forest stand delineation to verify the information presented in the FSD report;

(2) Before a construction activity begins to determine whether forest protection measures have been installed and conservation areas are clearly marked on-site;

(3) Following completion of all construction activities to determine the level of compliance with the provisions of the final forest conservation plan, including any afforested or reforested areas;

(4) At the end of the two (2)-year maintenance agreement; and

(5) At any time the Department considers it necessary to carry out the provisions of this Subtitle or the provisions of other legal agreement that may be adopted.

18-2-23 Commercial Timber Harvests.

(a) Timber harvest plan -- General requirements.

Any commercial timber harvesting activity involving more than one acre of forest in a one (1)-year period shall submit a timber harvest plan before the cutting begins.

(b) Same -- Procedure.

A person may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan, provided that the harvest:

(1) Is consistent with the intent of an approved forest management plan, forest conservation and management agreement, or other long-term protective agreement;

(2) Is consistent with the intent and requirements of the approved FCP;

(3) Is subject to a timber harvest plan that:

(i) Is prepared by a licensed professional forester; and

(ii) Remains in effect for two (2) years.

(4) Does not involve forest protected under a long-term protective agreement and which is located in deed restricted open space. A commercial timber harvest shall not be permitted in an open space area except under such case as the health of the forest is dependent on a selective cut (removal of old, dead dying or diseased trees), as determined by a licensed forester; and

(5) Does not involve clearcutting of any forest protected under a long-term protective agreement.

18-2-24 Penalties.

(a) Civil fines.

(1) Noncompliance penalty.

(i) A person found to be in noncompliance with the regulations set forth in this Subtitle, a forest conservation plan, protective agreement associated with a forest conservation plan, or a two (2)-year maintenance agreement shall be assessed by the Department a penalty of fifty (50) cents per square foot of the area found to be in noncompliance.

(ii) Money collected under subparagraph (i) of this paragraph shall be deposited into the Local Conservation Fund for purposes related to implementing this Subtitle. Money collected for noncompliance may not be returned to the violator.

(2) Additional penalties.

(i) In addition to the penalties specified in paragraph (1) of this Subsection, a person who violates a provision of this Subtitle or an administrative order adopted or issued under this

Subtitle is liable for a penalty not to exceed \$1,000, which may be recovered in a civil action brought by the Department.

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

(b) Injunctive relief.

(1) If a person violates a provision of this Subtitle, an administrative order, an approved forest conservation plan, or a maintenance agreement, the Department may, subject to paragraphs (2) through (4) of this Subsection:

(i) Issue a stop work order against the person; and

(ii) Seek an injunction requiring the person to cease the violation and take corrective action to restore or reforest an area.

(2) Written complaints.

(i) The Department may serve a written complaint on an alleged violator if the Department determines that the person has violated a provision of this Subtitle.

(ii) The complaint shall:

1. State the provision violated; and

2. Provide the person with an opportunity to request a hearing to contest the complaint.

(3) Administrative order.

(i) The Department may issue an administrative order requiring the violator to take corrective action within a certain time period.

(ii) The corrective action may include an order to:

1. Stop the violation;

2. Stabilize the site;

3. Stop all construction work to the site of a regulated activity; and/or

4. Restore or reforest unlawfully cleared areas.

(4) Service of complaint, order, or other administrative advice.

(i) A complaint, order, or other administrative notice issued by the Department shall be served:

1. On the owner of the property (the "violator") on which the alleged violation is occurring;

2. On the violator's agent at the activity site; and/or

3. By certified mail to the violator's last known address.

(ii) An order issued under this Section is effective immediately, according to its terms, when it is served.

(5) Subject to paragraph (6) below, the Department may suspend or revoke a forest conservation plan or forfeit a bond on a forest conservation plan if the Department determines that a person:

1. Fails to insure a financial security in accordance with the requirements and procedures set forth in Section 18-2-18 of this Subtitle;

2. Fails to comply with the requirements of an administrative action or order issued under this Subtitle;

3. Makes a misrepresentation in the application process or fails to disclose a relevant or material fact;

4. Violates a forest conservation plan requirement; or

5. Deviates from the conditions, specifications, or requirements of a forest conservation plan; or

(ii) Changes in site conditions, new information, or amended regulatory requirements necessitate preparation of a new or amended forest conservation plan.

(6) Except as provided under Subsection (d) of this Section, the Department may not suspend or revoke a forest conservation plan unless the Department first gives the alleged violator:

(i) Written notice by certified mail of the specific facts that warrant suspension or revocation; and

(ii) The opportunity for an administrative hearing.

(c) Statutory remedies.

The provisions of these regulations may not be construed to limit or affect the authority of the Department to proceed against violators under 5-1612 of the Natural Resources Article, Annotated Code of Maryland.

(d) Emergency action.

(1) The Department may order the immediate suspension of a forest conservation plan if the Department finds that the public health, safety, or welfare imperatively requires the emergency suspension.

(2) The Department shall give the violator written notice that the emergency action has been taken.

(3) A notice of emergency action shall include a statement:

(i) Of specific facts on which the emergency suspension is based; and

(ii) Notifying the violator of the violator's opportunity to be heard.

SUBTITLE 3. DEVELOPMENT IMPACT FEES

18-3-1 Definitions.

(a) In general.

In this Subtitle, unless otherwise defined in this Section, words and terms shall have the meaning assigned to them in the Glossary set forth as Appendix A to Title 18.

(b) Applicant.

“Applicant” means an individual, corporation, or other legal entity that applies for a building permit or zoning certificate in the County or a municipal corporation.

(c) Appropriation or to appropriate.

“Appropriation” or “to appropriate” means an action by the County Commissioners to identify specific public facilities for which development impact fee funds may be used. Appropriation shall include, but is not limited to:

(1) Inclusion of a public facility in the adopted capital budget or capital improvement program;

(2) Execution of a contract or other legal encumbrance for construction of a public facility using impact fee funds in whole or in part; and

(3) Actual expenditure of impact fee funds through payments made from an impact fee account or subaccount.

(d) Commercial use.

“Commercial use” means any development for commercial use of a site as defined under:

(1) In the Glossary set forth as Appendix A to Title 18; or

(2) The applicable zoning ordinance of a municipal corporation.

(e) Credit agreement.

“Credit agreement” means an agreement made pursuant to this Subtitle, which provides for a credit of certain required development impact fees in exchange for the provision of dedicated lands or the construction of facilities consistent with the County capital improvement program.

(f) Development impact fee or impact fee.

“Development impact fee” or “impact fee” means a fee levied as a condition of issuance of a building permit or zoning certificate, and which is intended to fund capital improvements and

public facilities needed to serve new growth and development activity in the County and municipal corporations

(g) Exemption.

“Exemption” means a waiver, either in whole or in part, in the amount of impact fees assessed against new development pursuant to the terms of this Subtitle, and based on the criteria set forth in Section 18-3-5 of this Subtitle.

(h) Finance Director.

Finance Director” means the Finance Director of the Queen Anne's County Finance Office.

(i) Fire protection impact fee.

“Fire protection impact fee” means a development impact fee imposed on new residential and non-residential development to fund the proportionate share of the costs of land acquisition for new fire stations; fire protection facilities, including construction, furniture, fixtures, equipment, and technology; and fire and emergency protection vehicles, equipment, and apparatus.

(j) Floor area.

“Floor area” means the sum of the gross area for each floor of a building’s stories measured from the exterior limits of the faces of the structure, and includes:

(1) Habitable basement floor area; and

(2) If the attic meets the Queen Anne’s County Building Code standards for habitable floor area, attic floor area.

(k) Impact fee subareas.

“Impact fee subarea” means a geographically defined area in the County that has been designated by the County Commissioners as an area in which new development will create the need for specified capital improvements to be funded in part or in whole by development impact fees.

(l) Impact fee subarea map.

“Impact fee subarea map” means the map of impact fee subareas adopted by the County Commissioners in which development impact fees for specified capital improvements are imposed.

(m) Industrial use.

“Industrial use” means any development for industrial use of a site as defined under:

(1) In the Glossary set forth as Appendix A to Title 18; or

(2) The applicable zoning ordinance of a municipal corporation.