

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

**January 5, 2021
Legislative Session Day**

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January 5, 2021**

**CODE HOME RULE
BILL NO. 2-2021**

INTRODUCED BY: P. Thomas Mason, President of the Board of County Commissioners for Kent County, Maryland.

AN ACT to amend all occurrences of the sub-section entitled, *Forest Conservation*, under Article V., *District Regulations*, using model language; to amend Article VI., *Special Provisions*, Section 8. *Forest Conservation*; to amend Article IX., *Variance and Waivers*, Section 3. *Waivers*; and to amend Article XI., *Definitions*, Section 2. *Definitions*, in order to provide for the required changes related to forest conservation, so that these forest conservation provisions comply with State Law.

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

INTRODUCED, read first time, January 5, 2021, ordered posted and public hearing scheduled February 2, 2021, at 6:00 p.m. in the County Commissioners Hearing Room, R. Clayton Mitchell, Jr., Kent County Government Center, 400 High Street, Chestertown, Maryland.

By order of:

Sondra M. Blackiston, Clerk

PUBLIC HEARING

HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on February 2, 2021. Reported favorably [with] [without] amendments; read a second time and ordered to be considered on February 9, 2021, a legislative session day.

A BILL ENTITLED CHR 2-2021 FOREST CONSERVATION UPDATE

SECTION 1.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that the Kent County Land Use Ordinance is hereby amended such that the following provisions found in Article V. District Regulations, including sub-sections 1.7.B.2., Agricultural Zoning District Specific Environmental Standards, Forest Conservation; 3.7.B.2., Rural Character District Specific Environmental Standards, Forest Conservation; 4.7.B.2., Rural Residential District Specific Environmental Standards, Forest Conservation; 6.7.B.2., Community Residential District Specific Environmental Standards, Forest Conservation; and 10.7.B.3., Crossroads Commercial Specific Environmental Standards, Forest Conservation are amended as follows, where the sub-section on Forest Conservation appears in the aforementioned:

Forest Conservation

[*Note*: for sub-sections a. - c., the text remains unchanged]

...

- d. The following trees, shrubs, plants, and specific areas are considered a priority for *retention* and protection and shall be left in an undisturbed condition unless the applicant demonstrates, to the satisfaction of the Department of Planning and Zoning, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered.
 - i. Trees, shrubs, and plants in sensitive areas including the *non-tidal 100-year floodplain, intermittent and perennial stream protection corridors, steep slopes, non-tidal wetlands, and critical habitats*;
 - ii. Contiguous *forest* that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the *site*;
- e. **THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS ARE CONSIDERED A PRIORITY FOR RETENTION AND PROTECTION AND SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT DEMONSTRATES, TO THE SATISFACTION OF THE PLANNING COMMISSION, THAT THE APPLICANT QUALIFIES FOR A WAIVER IN ACCORDANCE WITH ARTICLE IX, SECTION 3.3 OF THIS ORDINANCE.**
 - i. Trees, shrubs, and plants that are determined to be rare, threatened, or endangered **UNDER:**

- a) **THE FEDERAL ENDANGERED SPECIES ACT OF 1973 IN 16 U.S.C. §§1531—1544 AND IN 50 CFR 17;**
- b) **THE MARYLAND NONGAME AND ENDANGERED SPECIES CONSERVATION ACT, NATURAL RESOURCES ARTICLE, §§10-2A-01—10-2A-09, ANNOTATED CODE OF MARYLAND; AND**
- c) **COMAR 08.03.08;**
- ii. ~~iv.~~ Trees that are associated with an historic *structure* or *site*, or trees that have been designated by the state or county as a national, state, or county *champion tree*; and
- iii. ~~v.~~ Any *tree* having a diameter, measured at 4.5 feet above the ground, of:
 - a) Thirty inches or more; or
 - b) Seventy-five (75%) or more of the diameter, measured at 4.5 feet above the ground, of the current State *Champion tree* of that species as designated by the Department of Natural Resources.
- f. ~~e.~~ The required *reforestation* or *afforestation* may be accomplished *on-site*, *off-site*, by contributing to a *forest bank* in the same *watershed* or by contributing to the Kent County Reforestation Fund. The preferred method of *afforestation* or *reforestation* is *on-site* or *forest banking*.
- g. ~~f.~~ Whenever possible and appropriate, *afforestation* and *reforestation* shall include native species.

SECTION 2.

BE IT, HEREBY, FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that the Kent County Land Use Ordinance is hereby amended such that the following provisions found in Article V. District Regulations, including sub-sections 7.7.B.2., Village Specific Environmental Standards; 8.7.B.2., Intense Village Specific Environmental Standards; 11.7.B.3., Commercial Specific Environmental Standards; 14.8.B.3, Employment Center Specific Environmental Standards; and, 15.8.B.3., Industrial Specific Environmental Standards amended as follows, where the sub-section on Forest Conservation appears in the aforementioned:

Forest Conservation

[*Note: for sub-sections a. - c., the text remains unchanged*]

...

- d. **THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS ARE CONSIDERED A PRIORITY FOR RETENTION AND PROTECTION AND SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT DEMONSTRATES, TO THE SATISFACTION OF THE DEPARTMENT OF PLANNING AND ZONING, THAT REASONABLE EFFORTS HAVE BEEN MADE TO PROTECT THEM AND THE PLAN CANNOT BE REASONABLY ALTERED.**
 - i. **TREES, SHRUBS, AND PLANTS IN SENSITIVE AREAS INCLUDING THE NON-TIDAL 100-YEAR FLOODPLAIN, INTERMITTENT AND PERENNIAL STREAM PROTECTION CORRIDORS, STEEP SLOPES, NON-TIDAL WETLANDS, AND CRITICAL HABITATS;**
 - ii. **CONTIGUOUS FOREST THAT CONNECTS THE LARGEST UNDEVELOPED OR MOST VEGETATED TRACTS OF LAND WITHIN AND ADJACENT TO THE SITE;**

- e. **THE FOLLOWING TREES, SHRUBS, PLANTS, AND SPECIFIC AREAS ARE CONSIDERED A PRIORITY FOR RETENTION AND PROTECTION AND SHALL BE LEFT IN AN UNDISTURBED CONDITION UNLESS THE APPLICANT DEMONSTRATES, TO THE SATISFACTION OF THE PLANNING COMMISSION, THAT THE APPLICANT QUALIFIES FOR A WAIVER IN ACCORDANCE WITH ARTICLE IX, SECTION 3.3 OF THIS ORDINANCE.**
 - i. **TREES, SHRUBS, AND PLANTS THAT ARE DETERMINED TO BE RARE, THREATENED, OR ENDANGERED UNDER:**
 - a) **THE FEDERAL ENDANGERED SPECIES ACT OF 1973 IN 16 U.S.C. §§1531—1544 AND IN 50 CFR 17;**
 - b) **THE MARYLAND NONGAME AND ENDANGERED SPECIES CONSERVATION ACT, NATURAL RESOURCES ARTICLE, §§10-2A-01—10-2A-09, ANNOTATED CODE OF MARYLAND; AND**
 - c) **COMAR 08.03.08;**
 - ii. **TREES THAT ARE ASSOCIATED WITH AN HISTORIC STRUCTURE OR SITE, OR TREES THAT HAVE BEEN DESIGNATED BY THE STATE OR COUNTY AS A NATIONAL, STATE, OR COUNTY CHAMPION TREE; AND**

iii. ANY TREE HAVING A DIAMETER, MEASURED AT 4.5 FEET ABOVE THE GROUND, OF:

a) THIRTY INCHES OR MORE; OR

b) SEVENTY-FIVE (75%) OR MORE OF THE DIAMETER, MEASURED AT 4.5 FEET ABOVE THE GROUND, OF THE CURRENT STATE CHAMPION TREE OF THAT SPECIES AS DESIGNATED BY THE DEPARTMENT OF NATURAL RESOURCES.

f.d. The required *reforestation* or *afforestation* may be accomplished *on-site*, *off-site*, by contributing to a *forest bank* in the same *watershed* or by contributing to the Kent County Reforestation Fund. The preferred method of *afforestation* or *reforestation* is *forest banking* or *off-site afforestation*.

g.e. Whenever possible and appropriate, *afforestation* and *reforestation* shall include native species.

SECTION 3.

BE IT, HEREBY, FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that the Kent County Land Use Ordinance is hereby amended as follows:

ARTICLE VI.

SPECIAL PROVISIONS

SECTION 8. FOREST CONSERVATION

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8.2 APPLICABILITY

This Section applies to *minor* and *major site plans*, subdivisions, *public utilities* not exempt under this section and all *grading* permits for a disturbed area over 40,000 square feet excluding those areas governed by the Chesapeake Bay *Critical Area Protection Law* (Natural Resources Article, ~~Section 8-1801-1816~~ §§8-1801-1817, Annotated Code of Maryland). This Section also does not apply to the following:

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4. The cutting or clearing of public utility rights-of-way licensed under ~~Article 78, Section 54A and 54B or 54I,~~ **PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205,** Annotated Code of Maryland, or land for electric generating stations licensed under ~~Article 78, Section 54A and 54B or 54I,~~ **PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205,** Annotated Code of Maryland, provided:
 - a. Certificates of public conveniences and necessity have been issued in accordance with Natural Resources Article 78, §5-1603(f), Annotated Code of Maryland; and
 - b. Cutting or *clearing* of the *forest* is conducted to minimize the loss of *forest*.
5. Routine maintenance or emergency repairs of public utility rights-of-way licensed under ~~Article 78, Section 54A and 54B or 54I,~~ **PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205,** of the Annotated Code of Maryland.
- ...
7. Non-coal surface mining regulated under ~~Natural Resources Article, Title 7, Subtitle 6A,~~ **ENVIRONMENT ARTICLE, TITLE 15, SUBTITLE 8,** Annotated Code of Maryland.
8. An activity required for the purpose of constructing a dwelling intended for the use of the owner or a child ~~or a grandchild~~ of the owner, if the activity:
 - a. Does not result in the cutting, *clearing*, or *grading* of more than ~~40,000~~ **20,000** square feet of *forest*; and
 - b. Is the subject of a *Declaration of Intent* filed in the Department of Planning and Zoning which states that a transfer in ownership may result in the loss of the exemption.
- ...
11. **A RESIDENTIAL CONSTRUCTION ACTIVITY CONDUCTED ON AN EXISTING SINGLE LOT OF ANY SIZE OF RECORD AT THE TIME OF APPLICATION, OR A LINEAR PROJECT NOT OTHERWISE EXEMPTED UNDER THIS SECTION, IF THE ACTIVITY:**
 - a. **DOES NOT RESULT IN THE CUMULATIVE CUTTING, CLEARING, OR GRADING OF MORE THAN 20,000 SQUARE FEET OF FOREST; AND**
 - b. **DOES NOT RESULT IN THE CUTTING, CLEARING, OR GRADING OF A FOREST THAT IS SUBJECT TO THE REQUIREMENTS OF A PREVIOUS FOREST CONSERVATION PLAN APPROVED UNDER THIS ORDINANCE; AND**
 - c. **IS THE SUBJECT OF A DECLARATION OF INTENT FILED IN THE DEPARTMENT OF PLANNING AND ZONING WHICH STATES THAT A TRANSFER IN OWNERSHIP MAY RESULT IN THE LOSS OF THE EXEMPTION.**

12. AN ACTIVITY ON A PREVIOUSLY DEVELOPED AREA COVERED BY IMPERVIOUS SURFACE AND LOCATED IN A *PRIORITY FUNDING AREA*.
13. MAINTENANCE OR RETROFITTING OF A STORMWATER MANAGEMENT STRUCTURE THAT MAY INCLUDE CLEARING OF VEGETATION OR REMOVAL AND TRIMMING OF TREES, IF THE MAINTENANCE OR RETROFITTING IS WITHIN THE ORIGINAL LIMITS OF DISTURBANCE FOR CONSTRUCTION OF THE EXISTING STRUCTURE, OR WITHIN ANY MAINTENANCE EASEMENT FOR ACCESS TO THE STRUCTURE.
14. A *STREAM RESTORATION PROJECT* FOR WHICH THE APPLICANT FOR A GRADING OR SEDIMENT CONTROL PERMIT HAS EXECUTED A BINDING MAINTENANCE AGREEMENT OF AT LEAST FIVE YEARS WITH THE AFFECTED PROPERTY OWNER OR OWNERS.

8.3 GENERAL REQUIREMENTS

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B. *Forest Stand Delineation*

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2. *Forest Stand Delineation*

- a. A *Forest Stand Delineation* (FSD) shall be submitted at preliminary *site plan* or *subdivision* review, and before application for a *grading* or *sediment control permit* unless Section 8.3.B.1 applies. A FSD shall be submitted with the application for *minor site plan* or *minor subdivision* approval unless Article VI, Section 8.3.B.1 of this Ordinance applies.
- b. The delineation shall be prepared by a licensed forester, licensed landscape architect or other qualified professional who meets the requirements of COMAR 08.19.06.01A and shall meet the requirements of Article VI, Section 8.4 of this Ordinance.
- c. The delineation shall be used to determine the most suitable and practical areas for *forest conservation*.
- d. **AN APPROVED FOREST STAND DELINEATION MAY REMAIN IN EFFECT FOR A PERIOD NOT LONGER THAN 5 YEARS.**

C. *Forest Conservation Plans*

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6. If existing *forest* on the *site* subject to a *Forest Conservation Plan* can not be retained, the applicant shall demonstrate to the satisfaction of the Department of Planning and Zoning:
- a. How techniques for *forest retention* have been exhausted;
 - b. Why the priority forests and priority areas specified in the design standards of the zoning districts cannot be left in an undisturbed condition;

i. **IF PRIORITY FORESTS AND PRIORITY AREAS CANNOT BE LEFT UNDISTURBED, HOW THE SEQUENCE FOR AFFORESTATION OR REFORESTATION WILL BE FOLLOWED IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND;**

ii. **WHERE ON THE SITE IN PRIORITY AREAS, AFFORESTATION OR REFORESTATION WILL OCCUR IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND; AND**

iii. **HOW THE DISTURBANCE TO THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN THE DESIGN STANDARDS OF THE ZONING DISTRICTS QUALIFIES FOR A WAIVER.**

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8.4 PLAN REQUIREMENTS

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E. Forest Conservation Fund

1. A forest conservation fund is established **THAT MEETS THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §5-1610(h-1), ANNOTATED CODE OF MARYLAND.**
2. When the Kent County Department of Planning and Zoning determines that the requirements for *reforestation* or *afforestation on-site* or *off-site* cannot be reasonably accomplished **AND CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE SAME COUNTY OR WATERSHED ARE NOT AVAILABLE**, the applicant shall contribute money into the *forest conservation* fund.
 - a. **FOR A PROJECT INSIDE A PRIORITY FUNDING AREA, AT A RATE OF 30.5 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING WITH THE AMOUNT ADJUSTED BY THE DEPARTMENT OF NATURAL RESOURCES BASED ON THE PREVIOUS YEAR'S INFLATION RATE; AND**
 - b. **FOR A PROJECT OUTSIDE A PRIORITY FUNDING AREA, AT A RATE OF 36.6 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED**

PLANTING WITH THE AMOUNT ADJUSTED TO BE 20% HIGHER THAN THE RATE SET UNDER ITEM 2.A OF THIS SUBSECTION.

3. 4. The money shall be paid prior to final approval.
4. 5. Money deposited in the local *forest conservation* fund:
 - a. May be spent on the costs directly related to *reforestation* and *afforestation*, including *site* identification, acquisition, preparation, **AND MAINTENANCE OF EXISTING FORESTS AND ACHIEVING URBAN CANOPY GOALS.**
 - b. Shall be deposited in a separate *forest conservation* fund; and
 - c. May not revert to the general fund
5. 6. The County shall accomplish the *reforestation* **OR** *afforestation* **FOR THE EQUIVALENT NUMBER OF ACRES**, or *forest* land acquisition for which the money is deposited within two years or ~~four~~ **THREE** *growing seasons*, whichever is the greater time period after receipt of the money.
6. 7. *Reforestation*, *afforestation*, *forest easement* purchase, or *forest* land acquisition paid for by this fund shall occur in Kent County or its municipalities and in the same *watershed* in which the project is located.
7. 8. If the *reforestation*, *afforestation*, *forest easement* purchase, or *forest* land acquisition cannot be reasonably accomplished in the same *watershed* in which the project is located, the *reforestation*, *afforestation*, *forest easement* purchase, or *forest* land acquisition shall occur within the same county or *watershed* in the state in which the project is located.

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J. PAYMENT BY CREDITS FROM A FOREST MITIGATION BANK

1. **WHEN THE KENT COUNTY DEPARTMENT OF PLANNING AND ZONING DETERMINES THAT THE REQUIREMENTS FOR REFORESTATION OR AFFORESTATION ON-SITE OR OFF-SITE CANNOT BE REASONABLY ACCOMPLISHED, THE APPLICANT MAY CONTRIBUTE CREDITS FROM A FOREST MITIGATION BANK. A CREDIT IS REQUIRED FOR EACH TENTH OF AN ACRE OF AN AREA OF REQUIRED PLANTING.**
2. **THE CREDITS SHALL BE DEBITED FROM AN APPROVED FOREST MITIGATION BANK PRIOR TO FINAL APPROVAL.**

K. ESTABLISHING FOREST MITIGATION BANKS

1. **A PERSON MAY CREATE A *FOREST MITIGATION BANK* FROM WHICH APPLICANTS MAY PURCHASE CREDITS TO MEET THE *AFFORESTATION AND REFORESTATION* REQUIREMENTS OF THIS ORDINANCE.**

2. **THE *FOREST MITIGATION BANK* SHALL:**
 - a. ***AFFOREST OR REFOREST* AN AREA OF LAND IN ACCORDANCE WITH A *FOREST MITIGATION BANK AGREEMENT*;**
 - b. **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 OF PLANNING AND ZONING AND THE DEPARTMENT OF NATURAL RESOURCES;**
 - c. **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;**
 - d. **USE NATIVE PLANT MATERIALS FOR *AFFORESTATION* OR *REFORESTATION* UNLESS INAPPROPRIATE; AND**
 - e. **CAUSE TREES TO BE PLANTED WHICH:**
 - i. **ESTABLISH OR ENHANCE FORESTED BUFFERS ADJACENT TO *INTERMITTENT* AND *PERENNIAL STREAMS* AND COASTAL BAYS TO WIDTHS OF AT LEAST 50 FEET;**
 - ii. **ESTABLISH OR INCREASE EXISTING FORESTED CORRIDORS, WHICH, WHERE PRACTICAL, SHOULD BE A MINIMUM OF 300 FEET IN WIDTH TO FACILITATE WILDLIFE MOVEMENT, TO CONNECT EXISTING *FORESTS* WITHIN OR ADJACENT TO THE SITE;**
 - iii. **ESTABLISH OR ENHANCE FOREST BUFFERS ADJACENT TO *CRITICAL HABITATS* WHERE APPROPRIATE;**
 - iv. **ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR FLOODPLAINS;**
 - v. **STABILIZE SLOPES OF 25 PERCENT OR GREATER;**
 - vi. **STABILIZE SLOPES OF 15 PERCENT OR GREATER WITH A SOIL K VALUE GREATER THAN 0.35 INCLUDING THE SLOPES OF RAVINES OR OTHER NATURAL DEPRESSIONS;**
 - vii. **ESTABLISH BUFFERS ADJACENT TO AREAS OF DIFFERING LAND USE WHERE APPROPRIATE, OR ADJACENT TO HIGHWAYS OR UTILITY RIGHTS-OF-WAY; OR**
 - viii. **ESTABLISH FOREST AREAS ADJACENT TO EXISTING FORESTS TO INCREASE THE OVERALL AREA OF CONTIGUOUS FOREST COVER, WHEN APPROPRIATE.**

3. **A PERSON PROPOSING TO CREATE A *FOREST MITIGATION BANK* SHALL SUBMIT TO THE DEPARTMENT OF PLANNING AND ZONING A:**
- a. **COMPLETED APPLICATION ON A FORM APPROVED BY THE DEPARTMENT WHICH HAS BEEN SIGNED BY AN AUTHORIZED INDIVIDUAL;**
 - b. ***FOREST MITIGATION BANK PLAN* WHICH CONTAINS A:**
 - i. **VICINITY MAP OF THE PROPOSED MITIGATION BANK SITE;**
 - ii. **SIMPLIFIED *FOREST STAND DELINEATION* WHICH MEETS UNDER SECTION 8.3.B.1;**
 - iii. **DETAILED *AFFORESTATION* OR *REFORESTATION* PLAN, WHICH SHALL INCLUDE A TIMETABLE AND DESCRIPTION OF THE SITE AND SOIL PREPARATION NEEDED, SPECIES, SIZE, AND SPACING TO BE UTILIZED, 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; AND**
 - iv. **PROPOSED 2-YEAR MAINTENANCE AGREEMENT THAT INCLUDES:**
 - a) **WATERING PLANS**
 - b) **FERTILIZING PLANS**
 - c) **CONTROL OF COMPETING VEGETATION**
 - d) **PROTECTION FROM DISEASE PEST, AND MECHANICAL INJURY**
 - e) **REPLANTING PROVISIONS WHEN SURVIVAL FALL BELOW ACCEPTABLE LEVELS**
 - f) **NAME OF COMPANY OR INDIVIDUAL RESPONSIBLE FOR TREE CARE**
 - c. **COPY OF THE DEED TO THE PROPERTY;**
 - d. **SURVEY OR OTHER LEGALLY SUFFICIENT DESCRIPTION OF THE BANK SITE FOR INCLUSION IN THE DEEDS OF EASEMENT, DEED RESTRICTIONS, OR COVENANTS;**
 - e. **TITLE REPORT OR OTHER ASSURANCE THAT:**
 - i. **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**
 - ii. **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*; AND**
 - f. **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 OR *REFORESTATION* REQUIREMENTS.
4. THE OWNER OF AN APPROVED *FOREST MITIGATION BANK* SHALL ENTER INTO AN AGREEMENT WITH THE DEPARTMENT WHICH CONTAINS:
1. THE APPROVED *REFORESTATION* OR *AFFORESTATION* PLAN;
 2. THE APPROVED SYSTEM FOR MARKING AND TRACKING WHICH PORTIONS OF THE BANK HAVE BEEN DEBITED; AND
 3. AN ACKNOWLEDGMENT THAT THE BANK MAY NOT DEBIT ANY PORTION OF THE AFFORESTED OR REFORESTED LAND UNTIL 2 YEARS OF SUCCESSFUL GROWTH HAS BEEN ACHIEVED UNLESS THE BANKER HAS POSTED A BOND OR ALTERNATE FORM OF SECURITY.
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ARTICLE IX.

VARIANCES AND WAIVERS

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SECTION 3. WAIVERS

3.3 FOREST CONSERVATION

1. THE KENT COUNTY *PLANNING COMMISSION* MAY AUTHORIZE WAIVERS OF THE *FOREST CONSERVATION* RETENTION PROVISIONS OF THIS ORDINANCE SO AS TO RELIEVE UNWARRANTED HARDSHIP OR OTHER INJUSTICES ARISING OUT OF THE STRICT APPLICATION OF THESE PROVISIONS.

SUCH GRANTING OF A WAIVER SHALL COMPLY, AS NEARLY AS POSSIBLE, IN EVERY RESPECT TO THE SPIRIT, INTENT, AND PURPOSE OF THIS ORDINANCE; IT BEING THE PURPOSE OF THIS PROVISION TO AUTHORIZE THE GRANTING OF VARIATION ONLY FOR REASONS OF UNWARRANTED HARDSHIP AS DISTINGUISHED FROM VARIATIONS SOUGHT FOR PURPOSES OR REASONS OF CONVENIENCE, PROFIT, OR CAPRICE.

SUCH GRANTING OF A WAIVER SHALL NOT HAVE THE EFFECT OF NULLIFYING THE INTENT AND PURPOSE OF THESE PROVISIONS OR BE CONTRARY TO THE GOALS AND OBJECTIVES OF THE KENT COUNTY *COMPREHENSIVE PLAN* AND, WHERE APPLICABLE, THE VILLAGE MASTER PLANS. IN NO CASE SHALL ANY WAIVER BE MORE THAN A

MINIMUM EASING OF THE REQUIREMENTS AND SHALL NOT RESULT IN A CONFLICT WITH OTHER PROVISIONS OF THIS ORDINANCE.

2. UPON RECEIVING A SUBSTANTIALLY COMPLETE APPLICATION FOR A WAIVER, THE DEPARTMENT OF PLANNING AND ZONING SHALL SCHEDULE THE WAIVER FOR REVIEW BY THE *PLANNING COMMISSION*. AT LEAST 20 DAYS BEFORE THE MEETING, THE DEPARTMENT OF PLANNING AND ZONING SHALL SEND A NOTICE TO ADJACENT PROPERTY OWNERS USING THE MOST RECENT ADDRESS AS FOUND IN THE RECORDS OF THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION (SDAT) AND SHALL POST THE PROPERTY.

3. AN APPLICANT FOR A WAIVER SHALL:

- a. DESCRIBE THE SPECIAL CONDITIONS PECULIAR TO THE PROPERTY WHICH WOULD CAUSE THE UNWARRANTED HARDSHIP;
- b. DESCRIBE HOW ENFORCEMENT OF THESE RULES WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHERS IN SIMILAR AREAS;

3. IN ORDER TO GRANT A WAIVER, ~~THE~~ *PLANNING COMMISSION* MUST FIND ALL OF THE FOLLOWING:

- a. THAT THE WAIVER WILL NOT CONFER ON THE APPLICANT A SPECIAL PRIVILEGE THAT WOULD BE DENIED TO OTHER APPLICANTS;
- b. THAT THE WAIVER REQUEST IS NOT BASED ON CONDITIONS OR CIRCUMSTANCES WHICH ARE THE RESULT OF ACTIONS BY THE APPLICANT;
- c. THAT THE REQUEST DOES NOT ARISE FROM A CONDITION RELATING TO LAND OR BUILDING USE, EITHER PERMITTED OR NONCONFORMING, ON A NEIGHBORING PROPERTY; AND
- d. THAT THE GRANTING OF THE WAIVER WILL NOT ADVERSELY AFFECT WATER QUALITY.

4. CONDITIONS

IN GRANTING WAIVERS, THE *PLANNING COMMISSION* MAY REQUIRE SUCH CONDITIONS AS WILL, IN ITS JUDGMENT, SUBSTANTIALLY SECURE THE OBJECTIVES OF THE PROVISIONS SO WAIVED.

1. DECISION

WAIVERS FROM THE *FOREST CONSERVATION* RETENTION PROVISIONS

OF THIS ORDINANCE SHALL BE GRANTED ONLY BY THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE *PLANNING COMMISSION*. EACH CASE SHALL BE DECIDED AND A DECISION ISSUED NO LATER THAN 30 DAYS AFTER THE MEETING IS CONCLUDED. THE DECISION GRANTING OR DENYING THE WAIVER SHALL BE IN WRITING AND SHALL BE SIGNED BY THE CHAIRMAN OF THE *PLANNING COMMISSION*. THE DEPARTMENT OF PLANNING AND ZONING SHALL MAIL A COPY OF THE DECISION TO THE APPLICANT. THE DECISION SHALL BE MADE A PART OF THE PUBLIC RECORD OF THE PROCEEDINGS ON FILE IN THE DEPARTMENT OF PLANNING AND ZONING.

2. LAPSE OF WAIVER

AFTER THE *PLANNING COMMISSION* HAS GRANTED A WAIVER, THE WAIVER SO GRANTED SHALL LAPSE AFTER THE EXPIRATION OF ONE YEAR IF NO SUBSTANTIAL CONSTRUCTION HAS TAKEN PLACE IN ACCORDANCE WITH THE APPROVED *PROJECT* FOR WHICH SUCH WAIVER WAS GRANTED OR IF THE DECISION DOES NOT SPECIFY A PERIOD LONGER THAN ONE YEAR FOR GOOD CAUSE SHOWN.

3. AMENDMENT OF WAIVER

THE PROCEDURE FOR AMENDMENT OF A WAIVER ALREADY APPROVED OR A REQUEST FOR A CHANGE OF CONDITIONS ATTACHED TO AN APPROVAL SHALL BE THE SAME AS FOR A NEW APPLICATION.

4. APPEALS

APPEALS TO COURTS FROM A DECISION OF THE *PLANNING COMMISSION* MAY BE FILED IN THE MANNER PRESCRIBED BY LAW.

ARTICLE XI.

DEFINITIONS

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SECTION 2. DEFINITIONS For the purpose of this ordinance, certain terms and words are hereby defined.

63. Commercial Logging and Timber Harvesting Operations - ~~A commercial operation that would alter the existing composition or profile, or both, of a forest,~~ **THE CUTTING AND REMOVING OF TREE STEMS FROM A SITE FOR COMMERCIAL PURPOSES,**

LEAVING THE ROOT MASS INTACT, including INCLUDES all commercial operations done by companies and private individuals for economic gain.

76. Critical Habitat Area - A critical habitat for an *endangered species* and its surrounding protection area. A critical habitat area shall
- a. Be likely to contribute to the long-term survival of the species;
 - b. Be likely to be occupied by the species for the foreseeable future; and
 - c. Constitute habitat of the species that is considered critical under Natural Resources Article, Subsection 4-2A-04 and ~~10-2A-04~~ **10-2A-06**, Annotated Code of Maryland.

76.5 CRITICAL HABITAT FOR ENDANGERED SPECIES – A HABITAT OCCUPIED BY AN ENDANGERED SPECIES AS DETERMINED OR LISTED UNDER NATURAL RESOURCES ARTICLE, §§4-2A-04 AND 10-2A-04, ANNOTATED CODE OF MARYLAND.

81. Declaration of Intent

- a. A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property:
 - i. Is for certain activities exempted under this Ordinance or Natural Resources Article, ~~Subsection~~ **SUBSECTIONS 5-103 AND 5-1601—5-1612, ANNOTATED CODE OF MARYLAND;**
 - ii. Does not circumvent the requirements of this Ordinance or Natural Resources Article, ~~Subsection~~ **SUBSECTIONS 5-103 AND 5-1601—5-1612, ANNOTATED CODE OF MARYLAND;** and
 - iii. Does not conflict with the purposes of any other Declaration of Intent.
- b. The document required under this Ordinance.

131. Forest - A biological community dominated by trees and other woody vegetation, ~~including areas that have been cut but not cleared, but not including orchards.~~ **PLANTS COVERING A LAND AREA OF 10,000 SQUARE FEET OR GREATER, INCLUDES (1) AREAS THAT HAVE AT LEAST 100 LIVE TREES PER ACRE WITH AT LEAST 50 PERCENT OF THOSE TREES HAVING A 2-INCH OR GREATER DIAMETER AT 4.5 FEET ABOVE THE GROUND AND LARGER; AND (2) AREAS THAT HAVE BEEN CUT BUT NOT CLEARED.**

140.1 FOREST MITIGATION BANK - AN AREA OF LAND WHICH HAS BEEN INTENTIONALLY AFFORESTED OR REFORESTED FOR THE EXPRESS PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS.

140.2 FOREST MITIGATION BANK AGREEMENT - AN AGREEMENT ENTERED INTO BY AN INDIVIDUAL OWNING A FOREST MITIGATION BANK AND THE COUNTY WHICH COMMITS THE BANKER TO CERTAIN PROCEDURES

AND REQUIREMENTS WHEN CREATING AND OPERATING THE FOREST MITIGATION BANK.

140.3 FOREST MITIGATION BANK PLAN - A PLAN SUBMITTED FOR APPROVAL OF A FOREST MITIGATION BANK TO THE COUNTY BY AN INDIVIDUAL PROPOSING TO ESTABLISH A FOREST MITIGATION BANK.

174. Landscape Plan - A plan showing the dimensions and details for reforesting **AN AREA AT LEAST 35 FEET WIDE AND COVERING 2,500 SQUARE FEET OR GREATER IN SIZE** or landscaping, using native or indigenous plants when appropriate, and where applicable, ~~and~~ is made a part of an approved *Forest Conservation Plan*.

175.25 LINEAR PROJECT - A PROJECT WHICH IS ELONGATED WITH NEARLY PARALLEL SIDES AND IS USED TO TRANSPORT A UTILITY PRODUCT OR PUBLIC SERVICE NOT OTHERWISE CONTAINED IN AN APPLICATION FOR SUBDIVISION, SUCH AS ELECTRICITY, GAS, WATER, SEWER, COMMUNICATIONS, TRAINS, AND VEHICLES. IT MAY TRAVERSE FEE SIMPLE PROPERTIES THROUGH DEFINED BOUNDARIES OR ESTABLISHED EASEMENT RIGHTS.

179. Lot - A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or plat and which is recognized as a separate legal entity for the purposes of transferring title.

209. Net Tract Area - For *forest conservation*

a. Except in agricultural and resource areas, the total area of a *site*, including both forested and non-forested areas, to nearest 1/10 acre, reduced by the area ~~found to be within the boundaries of the non-tidal 100-year floodplain~~ **WHERE FOREST CLEARING IS RESTRICTED BY ANOTHER LOCAL ORDINANCE OR PROGRAM.**

b. In agricultural and resource areas, the part of the total *tract* for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area ~~found to be within the boundaries of the non-tidal 100-year floodplain~~ **WHERE FOREST CLEARING IS RESTRICTED BY ANOTHER LOCAL ORDINANCE OR PROGRAM.**

c. **FOR A LINEAR PROJECT, THE AREA OF A RIGHT-OF-WAY WIDTH, NEW ACCESS ROADS, AND STORAGE, OR THE LIMITS OF DISTURBANCE AS SHOWN ON AN APPLICATION FOR SEDIMENT AND EROSION CONTROL APPROVAL OR IN A CAPITAL IMPROVEMENTS PROGRAM PROJECTS DESCRIPTION.**

217. Non-tidal wetlands - Within the *Critical Area*, those lands, excluding *tidal wetlands* regulated under ~~Article IX of the~~ Natural Resources Article, **TITLE 9**, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the *soil* or

substrate is covered by shallow water at some time during the *growing season*, and which are usually characterized by one or both of the following:

- a. At least periodically, the lands support predominately *hydrophytic vegetation*; and
- b. The substrate is predominately undrained *hydric soils*.

Excluded from these *regulations* are farm ponds and other man-made bodies of water whose purpose is to impound water for *agriculture*, water supply, recreation, or *waterfowl* habitat purposes.

Outside the *Critical Area*, as defined by the State of Maryland, Army Corps of Engineers, Environmental Protection Agency, Natural Resources Conservation Service, U.S. Fish and Wildlife Service, and any other applicable State or Federal Agency.

246.25 PRIORITY FUNDING AREA - AN AREA DESIGNATED AS A PRIORITY FUNDING AREA UNDER STATE FINANCE AND PROCUREMENT ARTICLE, §5-7B-02, ANNOTATED CODE OF MARYLAND.

260. Reforestation - The establishment of a *forest* through artificial reproduction or *natural regeneration* and including for *forest conservation* purposes:

- a. The creation of a biological community dominated by trees and **OTHER** woody plants containing at least one hundred live trees **PER ACRE WITH AT LEAST 50 PERCENT OF THOSE TREES HAVING** the potential of obtaining a two-inch or greater diameter measured at 4.5 feet above the ground within seven years.
- b. Establishment of a *forest* according to the *Forest Conservation Technical Manual*.
- c. Landscaping of areas under an approved *landscape plan* establishing a *forest* at least 35 feet wide and covering an area of 2,500 square feet or more.
- d. **FOR A LINEAR PROJECT INVOLVING OVERHEAD TRANSMISSION LINES, IT MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.**

287. Seedlings - An unbranched woody plant, less than 24 inches in height and having a diameter of less than ~~2 inches~~ **½ INCH** measured at two inches above the root collar.

314.5 STREAM RESTORATION PROJECT - AN ACTIVITY THAT

- a. **IS DESIGNED TO STABILIZE STREAM BANKS OR ENHANCE STREAM FUNCTION OR HABITAT LOCATED WITHIN AN EXISTING STREAM, WATERWAY, OR FLOODPLAIN;**
- b. **AVOIDS AND MINIMIZES IMPACTS TO FORESTS AND PROVIDES FOR REPLANTING ON-SITE AN EQUIVALENT NUMBER OF TREES TO THE NUMBER REMOVED BY THE PROJECT;**
- c. **MAY BE PERFORMED UNDER A SEPARATE STORM SEWER SYSTEM PERMIT, A WATERSHED IMPLEMENTATION PLAN GROWTH OFFSET, OR ANOTHER PLAN ADMINISTERED BY THE STATE OR**

COUNTY TO ACHIEVE OR MAINTAIN WATER QUALITY STANDARDS; AND

- d. IS NOT PERFORMED TO SATISFY STORMWATER MANAGEMENT, WETLANDS MITIGATION, OR ANY OTHER REGULATORY REQUIREMENT ASSOCIATED WITH PROPOSED DEVELOPMENT ACTIVITY.

332.5 TIMBER HARVESTING - A TREE-CUTTING OPERATION AFFECTING 1 OR MORE ACRES OF FOREST OR DEVELOPED WOODLAND WITHIN A 1-YEAR INTERVAL THAT DISTURBS 5,000 SQUARE FEET OR MORE OF FOREST FLOOR. IT DOES NOT INCLUDE GRUBBING AND CLEARING OF ROOT MASS.

352. Watershed - The total *drainage area* contributing runoff to a single point. For *forest conservation* purposes all land lying within an area described as a sub-basin in water quality *regulations* adopted by the State of Maryland **DEPARTMENT OF THE ENVIRONMENT UNDER COMAR 26.08.02.08.**

SECTION 4.

BE IT, HEREBY, FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND that in the course of publishing this Ordinance, the Department of Planning, Housing and Zoning may correct any clerical, typographical, and grammatical errors, such as punctuation, capitalization, and spelling, and may publish a table of contents, title pages, cover pages, and graphics to improve readability so long as such items do not affect the substance of the text that is being adopted herein.

SECTION 5.

BE IT FURTHER ENACTED by the County Commissioners of Kent County that this Act shall take effect on the _____ day of _____.

Read Third Time _____

PASSED this _____ day of _____

Failed of Passage _____

By order of:

Sondra M. Blackiston, Clerk

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND

P. Thomas Mason, President

Ronald H. Fithian, Member

Robert N. Jacob, Jr., Member

ORDERED a fair summary thereof of the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four-week period.

BILL NO. 2-2021

CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW, EXCEPT § LETTERING. ~~Strike through~~ indicates matter deleted from existing law. 19 of 19