ARTICLE XIV

FOREST CONSERVATION

Section 1. Purpose

The purpose of this Article is to prohibit certain development projects from cutting or clearing certain forests within the Town of Washington Grove unless a forest stand delineation and a forest conservation plan are in effect. The Town Council has determined that to meet the requirements of Natural Resources Article, Sec. 5-1601--5-1612, Annotated Code of Maryland, the provisions of this Article must be enacted.

Section 2. Forest and Tree Conservation Definitions

In this Article the following terms have the meanings indicated:

Afforestation -- The establishment of a forest on an area from which forest cover has been absent for a long period of time; planting of open areas which are not presently in forest cover; or establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

Applicant -- A person who is applying for subdivision or project plan approval or a grading or sediment control permit, or who has received approval of a forest stand delineation or forest conservation plan.

Approved Forest Management Plan -- A document approved by the Maryland Department of Natural Resources forester assigned to the County in which the property is located; and which operates as a protective agreement for forest conservation as described in the Natural Resources Article, Sec. 5-1607(e)-(f), Annotated Code of Maryland.

Board of Zoning Appeals -- The Board of Zoning Appeals for the Town of Washington Grove.

Caliper -- The diameter measured at 2 inches above the root collar.

Champion Tree -- The largest tree of its species within the United States, the State, County, or Municipality;

COMAR -- Code of Maryland Regulations.

Commercial Uses -- Uses permitted in the Commercial Zone under the Washington Grove Zoning Article.

Critical Habitat Area -- A critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall be likely to contribute to the long-term survival of the species; be likely to be occupied by the species for the foreseeable future; and constitute habitat of the species which is considered critical under Natural Resources Article, Sec. 4-2A-04 and 10-2A-06, Annotated Code of Maryland.

Critical Habitat for Endangered Species -- A habitat occupied by an endangered species as determined or listed under Natural Resources Article, Sec. 4-2A-04 and 10-2A-04, Annotated Code of Maryland.

Declaration of Intent -- A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property that: (1) Is for certain activities exempted under this Article or Natural Resources Article, Sec. 5-103 and 5-1601--5-1612, Annotated Code of Maryland, (2) Does not circumvent the requirements of this Article or Natural Resources Article, Sec. 5-103 and 5-1601--5-1612, Annotated Code of Maryland, and (3) Does not conflict with the purposes of any other declaration of intent; and is the document required under COMAR 08.19.01.05 or this Article.

Development Project -- The grading or construction activities occurring on a specific tract that is 40,000 square feet or greater. "Development project" includes redevelopment.

Development Project Completion -- For the purposes of afforestation, reforestation, or payment into a fund: (1) the release of the development bond, if required; (2) acceptance of the project's streets, utilities, and public services by the Planning Commission; or (3) designation by the Planning Commission that a development project has been completed, or that a particular stage of a staged development project, including a planned unit development, has been completed.

Forest -- A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. "Forest" includes 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 areas that have been cut but not cleared. "Forest" does not include orchards.

Forest Conservancy District Board -- The forestry board created for each State forestry conservancy district under Natural Resources Article, Sec. 5-601--5-610, Annotated Code of Maryland.

Forest Conservation -- The retention of existing forest or the creation of new forest at the levels set by this Article.

Forest Conservation and Management Agreement -- An agreement as stated in the Tax-Property Article, Sec. 8-211, Annotated Code of Maryland.

Forest Conservation Plan -- A plan approved pursuant to this Article or the Natural Resources Article, Sec. 5-1606 and 5-1607, Annotated Code of Maryland.

Forest Conservation Technical Manual -- The Forest Conservation Manual, prepared by the Metropolitan Council of Governments for the Maryland Department of Natural Resources, dated December 31, 1991, and as may be amended.

Forest Cover -- The area of a site meeting the definition of forest.

Forest Management Plan -- A plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

Forest Stand Delineation -- The methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Forest Conservation Technical Manual.

Growing Season -- The period of consecutive frost-free days as stated in the current soil survey covering the Town published by the National Cooperative Soil Survey Program, 16 U.S.C. Sec. 590 (a)--(f).

Intermittent Stream -- A stream in which surface water is absent during a part of the year, as shown on the most recent 7.5-minute topographic quadrangle including the Town and published by the United States Geological Survey, and as confirmed by field verification.

Landscaping Plan -- A plan drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater in size; using native or indigenous plants when appropriate; and which is made part of an approved forest conservation plan.

Lot -- For purposes of this Article, 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, as defined by Natural Resources Article Sec. 5-1601, Annotated Code of Maryland and this Article without an approved forest stand delineation and forest conservation plan.

Maintenance Agreement -- The short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, Sec. 5-1605, Annotated Code of Maryland and this Article.

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

Net Tract Area -- The total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by the area found to be within the boundaries of the 100-year floodplain.

Nontidal Wetlands -- 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 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency. "Nontidal wetlands" does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.

Offsite -- Outside of the limits of the area encompassed by the tract.

Onsite -- Within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain.

100-year Flood -- A flood which has a 1 percent chance of being equalled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

100-year Floodplain -- An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

Perennial Stream -- A stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5-minute topographic quadrangle published by the United States Geological Survey, as confirmed by field verification.

Person -- The Federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

Project Plan -- A construction, grading, or sediment control activity on an area of 40,000 square feet or greater.

Public Utility -- any transmission line or electric generating station; or water, sewer, electric, gas, telephone, and television cable service line.

Reforestation (or Reforested) -- The creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years; or the establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual. "Reforestation" or "reforested" includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2500 square feet or more of area.

Regulated Activity -- Any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

A. Subdivision;
B. Grading;
C. An activity that requires a sediment control permit; or
D. Project plan of a local agency.

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

Sediment Control Permit -- The authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland. For purposes of this Article, sediment control permit refers to a permit issued under applicable provisions of Chapter 19, Montgomery County Code.

Seedlings -- An unbranched woody plant, less than 24 inches in height and having a diameter of less than 1/2 inch measured at 2 inches above the root collar.

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

Stream Buffer -- All lands lying within 50 feet, measured from the top of each normal bank of a perennial or intermittent stream.

Subdivision Plan -- An application for approval of a plat of subdivision prepared and submitted for approval by the Planning Commission pursuant to Article XII of the Code of Ordinances of the Town of Washington Grove.

Tract -- Property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to this subtitle.
Tree -- A large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

Variance -- Relief from this Article, pursuant to Section 16 of this Article. It does not mean a zoning variance.

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

Whip -- An unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar.

Section 3. Applicability

Except as provided in Section 4, this Article applies to:

(a) A person making application for a subdivision, project plan, grading, or sediment control approval on units of land 40,000 square feet or greater.

(b) A public utility not exempt under Section 3.2 (e) and (f).

(c) A unit of county or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas 40,000 square feet or greater.

Section 4. Exemptions

The following are exempt from the requirements of this Article:

(a) Highway construction activities under Natural Resources Article, Sec. 5-103, Annotated Code of Maryland.

(b) Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, Sec. 8-1801--8-1816, Annotated Code of Maryland.

(c) The cutting or clearing of public utility rights-of-way licensed under Article 78, Sec. 54A and 54B or Sec. 54-I, Annotated Code of Maryland or land for electric generating stations licensed under Article 78, Sec. 54A and 54B or Sec. 54-I, Annotated Code of Maryland, if:

(1) Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, Sec. 5-1603(f), Annotated Code of Maryland; and

(2) Cutting or clearing of the forest is conducted to minimize the loss of forest.

(d) Routine maintenance or emergency repairs of public utility rights-of-way licensed under Article 78, Sec. 54A and 54B or Sec. 54-I, Annotated Code of Maryland,

(e) Except for a public utility subject to Section 4(d) of this Article, routine maintenance or emergency repairs of a public utility right-of-way if:

(1) The right-of-way existed before the effective date of this Article; or

(2) The right-of-way's initial construction was approved under this Article.

(f) An activity conducted on an existing single lot of any size if the activity:

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

(2) 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 Article; and

(3) Is the subject of a declaration of intent filed with the Planning Commission, as provided for in Section 5 of this Article, stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest.

(g) An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:

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

(2) Is the subject of a declaration of intent filed with the Planning Commission, as provided for in Section 5 of this Article, which states that transfer of ownership may result in a loss of exemption.

(h) A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:

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

(2) Both the grantor and grantee file a declaration of intent, as provided for in Section 5 of this Article.

Section 5. Declaration of Intent

(a) The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, Sec. 5-103 and 5-1601--5-1612, Annotated Code of Maryland and this Article.

(b) A person seeking an exemption under Section 4(f),(g), and (h) of this article must file a declaration of intent with the Planning Commission.

(c) The existence of a declaration of intent does not preclude:

- **(1) An exempted activity on the property subject to a declaration of intent, if the activity:**
  - **(a) Does not conflict with the purpose of any existing declaration of intent, and**
  - **(b) Complies with the applicable requirements for an exempted activity;**
- **(2) A regulated activity on the area covered by the declaration of intent, if the activity occurs within 5 years of the effective date of the declaration of intent, in which case:**
  - **(a) There must be an immediate loss of exemption, or**
  - **(b) There may be a noncompliance action taken by the Town, as appropriate, under this Article; or**
- **(3) A regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Article are satisfied.**

(d) The Planning Commission may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:

- **(1) Meet the retention, afforestation and reforestation requirements established in this Article;**
- **(2) Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the declaration of intent;**
- **(3) Be subject to other enforcement actions appropriate under Natural Resources Article, Sec. 5-1601--5-1612, Annotated Code of Maryland and this Article; or**
- **(4) File a declaration of intent with the Planning Commission.**

(e) In its determination of appropriate enforcement action, the Planning Commission may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Article.

(f) The declaration of intent is effective for 5 years.

Section 6. <u>General Requirements</u>

(a) A person making application for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater must:

- **(1) Submit to the Planning Commission a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and**
- **(2) Use methods approved by the Planning Commission, as provided in the Forest Conservation Technical Manual, to protect retained forests and trees during construction.**

(b) If a local agency or person using State funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D--G apply.

Section 7. Forest Stand Delineation

(a) A forest stand delineation must be submitted at the initial stages of subdivision or project plan approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.

(b) The delineation must be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.

(c) The delineation must be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and must contain the following components:

- **(1) A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;**
- **(2) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15 percent or more;**
- **(3) Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;**
- **(4) Location of 100-year floodplains;**
- **(5) Information required by the Forest Conservation Technical Manual; and**
- **(6) Other information the Planning Commission determines is necessary to implement this Article.**

(d) If approved by the Planning Commission, a simplified delineation may be submitted for an area:

- **(1) When no forest cover is disturbed during a construction activity; and**
- **(2) Designated to be under a long term protective agreement.**

(e) The Planning Commission may consider a simplified forest stand delineation complete if it includes:

- **(1) All requirements under Section 7(c)(1) and (2) and (4) and (5) of this Article;**
- **(2) A map showing existing forest cover as verified by field inspection; and**
- **(3) Other information required by this Article.**

(f) An approved forest stand delineation may remain in effect for a period not longer than 5 years.

(g) Time for Submittal.

- **(1) Within 30 calendar days after receipt of the forest stand delineation, the Planning Commission must notify the applicant whether the forest stand delineation is complete and correct.**
- **(2) If the Planning Commission fails to notify the applicant within 30 days, the delineation must be treated as complete and correct.**

(3) The Planning Commission may require further information or provide for an additional 15 calendar days under extenuating circumstances.

Section 8. Forest Conservation Plan

8.1 General Provisions

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

(b) If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant must demonstrate to the satisfaction of the Planning Commission:

(1) How techniques for forest retention have been exhausted;
(2) Why the priority forests and priority areas specified in Natural Resources Article, Sec. 5-1607(c), Annotated Code of Maryland, cannot be left in an undisturbed condition;
(3) 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 Section 5-1607(a), Annotated Code of Maryland; and
(4) Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article Section 5-1607, Annotated Code of Maryland.

(c) The applicant must demonstrate to the satisfaction of the Maryland Department of Natural Resources that the requirements of afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the State forest conservation fund instead of afforestation or reforestation. (See Section 12 of this Article.)

(d) Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Natural Resources Article, Sec. 8-1201--1211, Annotated Code of Maryland, and COMAR 08.05.04 is subject to both the nontidal wetlands regulatory requirements and the requirements of this law, subject to the following:

(1) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, must be counted towards forest conservation requirements under this Article.
(2) For the purpose of calculating reforestation mitigation under this Article, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 must be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.
(3) Nontidal wetlands must be considered to be priority areas for retention and replacement.
(4) Nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the nontidal wetlands and to avoid delay in the approval process.

8.2 Preliminary Forest Conservation Plan

(a) A preliminary forest conservation plan must be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.

(b) A preliminary forest conservation plan must:

- **(1) Be submitted with the preliminary plan of subdivision or proposed project plan;**
- **(2) Include the approved forest stand delineation for the site;**
- **(3) Include a table that lists the proposed values of the following, in square feet:**
  - **(a) Net tract area,**
  - **(b) Area of forest conservation required, and**
  - **(c) Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;**
- **(4) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;**
- **(5) Include an explanation of how the provisions of Section 8.1 of this Article have been met;**
- **(6) In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;**
- **(7) Include a proposed construction timetable showing the sequence of forest conservation procedures;**
- **(8) Show the proposed limits of disturbance;**
- **(9) Show proposed stockpile areas;**
- **(10) Incorporate a proposed 2-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;**
- **(11) Information required in the Forest Conservation Technical Manual; and**
- **(12) Other information the Planning Commission determines is necessary to implement this Article.**

(c) The review of the preliminary forest conservation plan is to be concurrent with the review of the preliminary site plan.

(d) During the different stages of the review process, the preliminary forest conservation plan may be modified.

8.3 Final Forest Conservation Plan

(a) A final forest conservation plan must be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.

(b) A final forest conservation plan must:

- **(1) Be submitted with the following:**
  - **(a) A final subdivision plan,**
  - **(b) A final project plan,**
  - **(c) An application for a grading permit, or**
  - **(d) An application for a sediment control permit;**
- **(2) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;**

(3) In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;

(4) Incorporate a binding 2-year maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:

(a) Watering, and

(b) A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Technical Manual;

(5) Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:

(a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and

(b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;

(6) Include the substantive elements required under Section 8.2(b)(2)--(5), (7)--(9), and (11) of this Article, as finalized elements of the forest conservation plan; and

(7) Other information the Planning Commission determines is necessary to implement this Article.

(c) Time for submittal.

(1) Within 45 calendar days after receipt of the final forest conservation plan, the Planning Commission must notify the applicant whether the forest conservation plan is complete and approved.

(2) If the Planning Commission fails to notify the applicant within 45 calendar days, the plan must be treated as complete and approved.

(3) The Planning Commission may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.

(4) At the request of the applicant, the Planning Commission may extend the deadline under extenuating circumstances.

(d) The Planning Commission's review of a final forest conservation plan is to be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.

(e) The Planning Commission may revoke an approved forest conservation plan if it finds that:

(1) A provision of the plan has been violated;

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

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

(f) The Planning Commission may issue a stop work order against a person who violates a provision of this Article or a regulation, order, approved forest conservation plan, or maintenance agreement.

(g) Before revoking approval of a forest conservation plan, the Planning Commission must notify the violator in writing and provide an opportunity for a hearing.

Section 9. Afforestation and Retention

9.1 Afforestation Requirement

A person making application after the effective date of this Article for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater, must:

(a) Conduct afforestation on the lot or parcel such that a tract with less than 15 percent of its net tract area in forest cover must be afforested up to at least 15 percent of the net tract area.

(b) Comply with the following when cutting into forest cover that is currently below the afforestation percentages specified in Section 7.1(a) of this Article:

- **(1) The required afforestation level must be determined by the amount of forest existing before cutting or clearing begins; and**
- **(2) Forest cut or cleared below the required afforestation level must be reforested or afforested at a 2 to 1 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.**

9.2 Retention

The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and must be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Planning Commission, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

(a) Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, nontidal wetlands, and critical habitats;

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

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

- **(1) The Federal Endangered Species Act of 1973 in 16 U.S.C. Sec. 1531--1544 and in 50 CFR Part 17,**
- **(2) The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, Sec. 10-2A-01--10-2A-09, Annotated Code of Maryland, and**
- **(3) COMAR 08.03.08;**

(d) Trees that:

(1) Are part of a historic site,

(2) Are associated with a historic structure, or

(3) Have been designated by the State or the Town as a national, State, or Town champion tree; and

(e) Any tree having a diameter measured at 4.5 feet above the ground of:

(1) 30 inches or more; or

(2) 75 percent 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 Maryland Department of Natural Resources.

Section 10. Reforestation

(a) There is a forest conservation threshold established, and it is the same for all land use categories in the Town. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

(b) After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan must provide for reforestation, or payment into the forest conservation fund, according to the formula set forth in this Section and consistent with Section 8.1 of this Article, and the specification that 20 percent is the forest conservation threshold for all land use categories in the Town.

(c) Calculations.

(1) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed must 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 must be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit must be according to the criteria provided in the Forest Conservation Technical Manual.

(3) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed must be reforested at a ratio of 2 acres planted for each acre removed below the threshold and at a ratio of 1/4 acre planted for each acre removed above the threshold.

Section 11. Priorities and Time Requirements for Afforestation and Reforestation

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

(1) Selective clearing and supplemental planting on site;

(2) Onsite afforestation or reforestation, if economically feasible, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
(3) Onsite afforestation or reforestation, using whip and seedling stock;
(4) Landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area;
(5) Offsite afforestation or reforestation, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;
(6) Offsite afforestation or reforestation, using whip and seedling stock;
(7) Natural regeneration on site; and
(8) Natural regeneration offsite.

(b) A sequence other than the one described in Subsection 11(a) of this Article may be used for a specific project, if necessary, to achieve the objectives of the Town Master Plan or Town land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.

(c) The following are considered a priority for afforestation and reforestation to:
(1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
(2) Establish or enhance nonforested areas on 100-year floodplains, when appropriate;
(3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
(4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
(5) Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
(6) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
(7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
(8) Use native plant materials for afforestation or reforestation, when appropriate.

(d) A person required to conduct afforestation or reforestation under this article must accomplish it within 1 year or two growing seasons, whichever is a greater time period, following development project completion.

Section 12. <u>Payment Instead of Afforestation and Reforestation</u>

There is no local forest conservation fund established for purposes of this Article. Allowable payment into the State fund instead of afforestation and reforestation is determined by the Maryland Department of Natural Resources under COMAR 08.19.02.02I.

Section 13. Recommended Tree Species

(a) Tree species used for afforestation or reforestation must be native to Montgomery County.

(b) The determination that a tree species meets the above native requirement for afforestation or reforestation is the responsibility of the preparer of the final forest conservation plan as qualified under Section 8.3(a) of this Article.

Section 14. Financial Security for Afforestation and Reforestation

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

(1) Assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;
(2) Be in an amount equal to the estimated cost, as determined by the Town, of afforestation and reforestation; and
(3) Be in a form and of a content approved by the Town.

(b) After one growing season, the person required to file a bond under Section 14(a) of this article may request reduction of the amount of the bond or other financial security by submitting a written request to the Planning Commission with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met.

(c) The Planning Commission shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:

(1) The number of acres,
(2) The proposed method of afforestation or reforestation,
(3) The cost of planting materials or replacement materials,
(4) The cost of maintenance of the afforestation or reforestation project, and
(5) Other relevant factors.

(d) If, after two growing seasons, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security must be returned or released.

Section 15. Standards for Protecting Trees from Construction Activities

(a) The standards for the protection of trees from construction activity are provided in the Forest Conservation Technical Manual.

(b) Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Article, the applicant must demonstrate to the Planning Commission that protective devices have been established.

Section 16. Variances

(a) Written Request. A person may request from the Town of Washington Grove Board of Zoning Appeals a variance from this Article, or any regulation adopted under it, if the person demonstrates that enforcement would result in practical difficulty to the person. Practical difficulty means that the strict application of this Article would prevent the applicant from using the lot for a permitted purpose or would render conformity with the requirements in this Article unnecessarily burdensome. A request for a variance waives the time requirements in Sections 7 and 8.

(b) Application Requirements. An applicant for a variance must:

(1) Describe the special conditions peculiar to the property which would cause the practical difficulty;
(2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
(3) Verify that State water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
(4) Provide any other information appropriate to support the request.

(c) Minimum criteria. A variance must not be granted if granting the request:

(1) Will confer on the applicant a special privilege that would be denied to other applicants;
(2) Is based on conditions or circumstances which are the result of the actions by the applicant;
(3) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
(4) Will violate State water quality standards or cause measurable degradation in water quality.

(d) Approval Procedures; Conditions

The Board of Zoning Appeals may grant a variance if the Board finds on the basis of preponderance of evidence in the record that the applicant has met all requirements of this Section. Appropriate conditions may be imposed to promote the objectives of this Article and protect the public interest. In granting a variance, the Board may only permit the least departure from the limitations of this Article that will give relief to the applicant.

(e) Notice to Maryland Department of Natural Resources; Right to Initiate or Intervene in Proceedings

(1) Notice of a pending variance request must be given to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.
(2) The Maryland Department of Natural Resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance.

Section 17. Penalties

(a) Noncompliance Fees.

(1) A person found to be in noncompliance with this Article,

regulations adopted under this Article, the forest conservation plan, or the associated 2-year maintenance agreement, may be assessed by the Planning Commission the penalty of 30 cents per square foot of the area found to be in noncompliance with required forest conservation.

(2) Money collected under Subsection 17(a)(1) of this article must be deposited in the State forest conservation fund as referenced in Section 12 of this Article.

(b) Violation.

(1) In addition to the provisions under Subsection 17(a) of this Article, a person who violates a provision of this Article or a regulation or order adopted or issued under this Article is liable for a penalty not to exceed $1,000, which may be recovered in a civil action brought by the Town.

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

(c) The Town may seek an injunction requiring the person to cease violation of this Article and take corrective action to restore or reforest an area.

Section 18. Annual Report

On or before July 1 of each year, the Town will submit to the Senate Economic and Environmental Affairs Committee and the House Environmental Matters Committee a report on:

(a) The number, location, and type of projects subject to the provisions of this Article;

(b) The amount and location of acres cleared, conserved, and planted in connection with a development project;

(c) The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and

(d) The costs of implementing the Forest Conservation Program.

Section 19. Amendments

This Article may be amended as required. All amendments to this Article are subject to the approval of the Maryland Department of Natural Resources.