

ARTICLE VI Forest and Tree Conservation

§267-34 Applicability.

- A. Except as provided in Subsection B, this Article applies to any person, including the County, who applies after January 1, 1992, for subdivision approval, a grading permit, or a building permit for an area of land of ~~40,000~~ 20,000 square feet or more.

FOH Note: This unusual square footage comes from Maryland law. We may amend to be stricter than what the state recommends. In Harford County, 40,000 sq.ft. delineates the septic reserve area. The new septic reserve area is 20,000 sq.ft. Therefore we believe the Forest and Tree Conservation bill should apply to all lands of 20,000 sq.ft. in all. The first Tree Bill was enacted on 9/9/91 (91-31) and was amended effective 3/9/92 (91-72). So anything approved before that is “non-conforming.” With that being the case, they should be treated as non-conforming uses and expire if not used within a year. (Some developments platted long after the owner is dead, his heirs have sold the land and a corporation is now building a development where they do not legally have to replace the trees it cuts.)

- B. This Article does not apply to:

(1) Cutting or clearing conducted in accordance with a forest harvest permit issued under Chapter 214 of this Code, if the cutting or clearing:

(a) Is completed before July 1, 1991; or

(b) Is completed on or after July 1, 1991, and the property on which the cutting or clearing is conducted is not the subject of an application for a grading permit within 5 years after the cutting or clearing;

FOH Note: 5 years is all we require to hold this land from development.

(2) Cutting or clearing in the Chesapeake Bay Critical Area Overlay District established under §267-63 ;

(3) Cutting or clearing to further agriculture, if the land on which the cutting or clearing is conducted is not the site of development within 5 years after the clearing or cutting;

FOH Note: 5 years is all we require to hold this land from development.

(4) Forest management activities conducted in accordance with a Federal, State, or local forestry or woodland incentives program;

(5) If conducted so as to minimize the loss of forest, cutting or clearing of:

(a) Public utility rights-of-way; and

(b) Land for an electrical generating station approved by the Public Service Commission under Article 78, §§ 54A, 54B, or 54I of the Annotated Code of Maryland;

(6) Routine maintenance of public utility rights-of-way;

(7) Any development conducted **(Added) on a single residential parcel** described in the Land Records as of January 1, 1992, of any size, if the development:

(a) Does not result in the cutting, clearing, or grading of more than ~~40,000~~ 20,000 square feet of forest; and

(b) Does not result in the cutting, clearing, or grading of any forest that is subject to a previous forest conservation plan prepared under this Article; and,

(c) If land on which cutting or clearing has been conducted in accordance with an exemption under Subsections B(1)(b) or B(3) is developed:

(1) Within 5 years after the cutting or clearing, the development is subject to this Article and the required forest conservation shall be calculated based on the acreage of forest that existed before the cutting or clearing; and **FOH Note: 5 years is all we require to hold this land from development.**

(2) More than 5 years after the cutting or clearing, the development is subject to this Article and the required forest conservation shall be calculated based on the acreage of forest that exists after the cutting or clearing.

(8) **Omitted Any strip or deep mining of coal and any noncoal surface mining**

FOH: This is good

§267-35. General Requirements.

A person who applies ~~after January 1, 1992~~, for subdivision approval, a grading permit, or a building permit for an area of land of ~~40,000~~ 20,000 square feet or more: **The first Tree Bill was enacted on 9/9/91 (91-31) and was amended effective 3/9/92 (91-72). So anything approved before that is “non-conforming.” With that being the case, they should be treated as non-conforming uses and expire if not used within a year.**

A. (1) Shall submit, to the Department, **(Added)in accordance with the Forest Cover Conservation and Replacement Manual:**

- (a) A forest stand delineation for the lot or parcel on which the development is located; and
- (b) A forest conservation plan for the lot or parcel on which the development is located;

(2) Shall not, unless granted an exemption by the Department, perform any construction activity in the dripline of ~~a~~ all trees that ~~is~~are to be retained; and

(3) Shall use methods approved by the Department to protect retained trees, **bolts, limbs and roots** during construction.

B. Notwithstanding any other provision of this Article, the Department of Public Works shall plant at least 1 tree for every ~~2 trees~~ **one tree** of a DBH of 8 inches or more that it cuts or clears as part of a project to widen a County road. **FOH Note: While the same amount of trees may not fit roadside, some planting may be made elsewhere if only to replace dying or diseased roadside trees.**

C. When planting trees in accordance with Subsection B of this Section, the Department of Public Works shall meet the following criteria:

(1) The trees planted shall:

(a) Have at maturity approximately the same area of canopy as the trees that were cut or cleared **of the same species and endemic on the site** ; and

(b) Have a **caliper dbh** of at least 1 ½ inches;

FOH: This measures the diameter at 4 ½ feet instead of 6 inches above ground. Caliper measures at the base and is much smaller.

(2) The trees shall be planted:

(a) If feasible, on the site or in the right-of-way used for the project;

(b) If the owner of the abutting property requests, on property that abuts the site or the right-of-way used for the project;

(3) The trees shall be of the same species as those cut or cleared if:

(a) The owner of the abutting property so requests; and

(b) They are planted on abutting property;

(4) If the owner of the abutting property requests, the Department of Public Works shall pay the owner a fee in an amount equal to the cost of the trees **and all associated planting costs** that would have been planted on the abutting property under this Section, and payment of the fee relieves the Department of Public Works of the duty to plant the trees.

§267-36. Forest Stand Delineation.

A. A forest stand delineation shall be submitted before a preliminary subdivision plan, a grading permit application, or a building permit application is submitted for the lot or parcel being developed.

B. The delineation shall be prepared by a licensed forester, **or** licensed landscape architect, ~~or other professional approved by the Department.~~

FOH Note: This is entirely too loose an interpretation.

C. The delineation shall include:

(1) A topographic map delineating intermittent and perennial streams, and **steep slopes over 25%**;

FOH Note: One should be able to see all slope. Contradicts (2) below.

(2) A soils map delineating soils with structural limitations, hydric soils, and soils with a soil K Value greater than 0.35 on slopes of 15% or more;

(3) Forest stand maps indicating species, location, and size of trees, and showing dominant and codominant forest types;

(4) Limit of non-tidal wetlands and required buffers; **NEW**

(5) Limit of 100 year floodplain; and **NEW**

(6) Any other information required by the Department.

D. Action by Department.

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

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

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

FOH: No excuse for lack of Department notice. Failure of the Department should never reward a plan whether it is a good or poor plan.

§267-37. Forest Conservation Plan.

A. A forest conservation plan shall be prepared by a licensed forester or, a licensed landscape architect, ~~or other professional approved by the Department.~~

FOH Note: This is entirely too loose an interpretation.

B. A forest conservation plan shall:

- (1) Be submitted with the first of the following submitted for the site:
 - (a) A preliminary subdivision plan;
 - (b) An application for a grading permit; or
 - (c) An application for a building permit;
 - (2) Include a map of the site drawn at the same scale as the grading or subdivision plan;
 - (3) Include a table that lists, in square feet:
 - (a) The net tract area;
 - (b) The total area of forest conservation required; and
 - (c) The total area of forest conservation that the applicant proposes to provide, including both on-site and off-site areas;
 - (4) Include a clear graphic indication of the forest conservation provided on the site, showing areas where retention of existing forest or afforestation is planned;
 - (5) Include a construction timetable, indicating the phasing of the project, and showing the sequence for tree conservation procedures;
 - (6) Include an afforestation and reforestation plan with a proposed schedule and description of needed site and soil preparation, species, size, and spacing to be utilized;
 - (7) Show locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation;
 - (8) All planted trees must be protected from detrimental wildlife activities. Show locations and types of protection devices being used.
 - (9) Show the planned limits of disturbance;
 - (10) Show planned stockpile areas;
 - (11) Incorporate a commitment to complete all required afforestation and reforestation in accordance with the schedule established by the Department in the approved forest conservation plan;
 - (12) Incorporate a binding 2-year management agreement that details how the areas designated for afforestation or reforestation will be maintained to ensure protection or satisfactory establishment, including:
 - (a) Watering and any other required tree maintenance (e.g., mowing); and
 - (b) Reinforcement planting provisions if survival rates fall below required standards;
- FOH Note: Survival rate is 100 trees/acre or 75% after second year. This is probably realistic. On a 10X 10 spacing, planting would be 435 trees/acre. Normal requirement is 50% survival or around 200 trees/acre.
- (12) Include any plan for individual tree plantings proposed under §267-43 (Individual Tree Plantings), of this Article;
 - (13) Incorporate a binding protective agreement that:
 - (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, retention, and individual tree plantings;
 - (b) Limits uses in areas of forest conservation to those uses that are consistent with forest conservation, including recreational activities and any forest management practice that is used to preserve forest; and
 - (c) Incorporates conservation easements, deed restrictions, covenants, and other agreements as necessary; and
 - (14) Any other information the Department requires.

C. Action by Department.

- (1) Within 45 calendar days after receipt of the forest conservation plan, the Department shall notify the applicant whether the forest conservation plan is complete and approved.

~~(2) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved. See 267-36 D (2)~~

(3) The Department 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 Department may extend the deadline for an additional 15 calendar days under extenuating circumstances.

FOH Note: Extensions should be same for department as applicant.

D. The Department's review of a forest conservation plan shall be concurrent with the review of the subdivision plan, grading permit application, or building permit application associated with the project.

E. The Department may revoke an approved forest conservation plan if it finds that:

(1) Any 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. In revoking an approved forest conservation plan under Subsection E, the Department shall follow the procedure for revocation of Zoning Certificates that is set forth in §267-8(F) (Zoning Certificates), of this Chapter.

G. If a forest conservation plan is required by this Article, a person may not cut, clear, or grade on the development site:

(1) Until the Department has approved the plan; or

(2) In violation of the approved plan.

§267-38. Abbreviated Process.

A. In this Section, "parcel" means a parcel described in the Land Records as of the effective date of County Council Bill No. 93-11.

B. This Section applies only to the first 5 lots created from a parcel.

C. A person is not required to submit a forest stand delineation or a forest conservation plan for a subdivision of 5 or fewer residential lots if:

(1) Development will not result in the cutting, clearing, or grading of:

(a) A cumulative total of more than ~~40,000~~ 20,000 square feet of forest on the parcel; and

(b) Forest that is subject to an approved forest conservation plan;

(2) The person files with the preliminary subdivision plan a declaration of intent stating that development will be conducted in accordance with Paragraph (1) of this Subsection; and

(3) The forest to be retained on the parcel is designated as such on the preliminary subdivision plan and the final subdivision plat.

D. A person may file an abbreviated forest stand delineation for a subdivision of 5 or fewer residential lots if:

(1) Development will result in the cutting, clearing, or grading of a cumulative total of more than ~~40,000~~ 20,000 square feet of forest on the parcel;

(2) Development will not result in the cutting, clearing, or grading of forest that is subject to an approved forest conservation plan;

(3) The abbreviated forest stand delineation is prepared in accordance with the standards for such delineations in the Department's Forest Conservation Manual; and

(4) A forest conservation plan is also submitted for the site.

E. A person who files an abbreviated forest stand delineation may file the delineation and the forest conservation plan for the site at the same time.

F. Within 60 calendar days after receipt of the abbreviated forest stand delineation and the forest conservation plan, the Department shall notify the applicant as to whether the delineation and plan are complete and approved.

FOH Note: Times are 15, 30, 45 and 60 days for various approvals or extensions. Confusing.

Type of Use	Minimum Percentage of Forest to be Preserved
Natural resources uses & low-density residential uses	50%
Medium-density residential uses	40%
Institutional uses	30%
High-density residential uses	30%
Business and industrial uses	15%

G.

If the abbreviated forest stand delineation and the forest conservation plan are submitted separately, the period of 60 calendar days established by Subsection F starts from the later date of submission.

~~H. If the Department fails to notify the applicant within 60 calendar days, the delineation and the plan shall be treated as complete and approved.~~

Applicant shall not proceed without a Department approval of delineation and plan.

I. The Department may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.

§267-39. Retention and Afforestation.

A. A person who applies after January 1, 1992, for subdivision approval, a grading permit, or a building permit for an area of land of ~~40,000~~ 20,000 square feet or more: FOH Note: See 267-34 A

(1) Shall conduct afforestation on the lot or parcel in accordance with the following:

(a) For the following land use categories, a site with less than 20% of its net tract area in forest cover shall be afforested up to at least ~~20%~~ 40% of the net tract area:

- [1] Natural resources;
- [2] Medium-density residential uses; and
- [3] Low-density residential uses; and

FOH Note: This says that if a development is built in a field, 20% of the property has to be afforested if 20% is already forested. One assumes that totals 40%, but it can also be read to be 21%. The table says that if it IS already forested 50% must remain. This in effect, makes developers look for acreage without trees which is land suitable for farming as a rule. While we applaud the retention of the trees, we also feel that planting new trees, afforestation, be equitable.

(b) For the following land use categories, a site with less than 15% of its net tract area in forest cover shall be afforested up to at least ~~15%~~ 30% of the net tract area:

- [1] Business uses;
- [2] Industrial uses;
- [3] Institutional uses; and
- [4] High-density residential uses; and

FOH Note: In this instance, the least percentage is used. We recommend the greatest be used.

(2) Shall retain at least the following minimum percentages of the existing forest on the lot or parcel:

B. Subsection A(2) does not apply to the development of a water line, a sewer line, or a sanitary landfill.

C. The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection 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 them and the plan cannot be reasonably altered;~~

FOH Note: Again this is too loose a condition. It needs oversight by an impartial party or struck altogether. Why would we allow an endangered species to be eliminated when one can change the plan?

(1) Trees, shrubs, and plants located in sensitive areas, including the Floodplain District established under Chapter 131 of this Code, intermittent and perennial streams and their buffers, steep slopes, and critical habitat areas;

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

(3) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the United States Fish and Wildlife Service or the State Department of Natural Resources;

(4) Trees that:

(a) Are part of a historic site;

(b) Are associated with a historic structure; or

(c) Have been designated by the State or the Department as a national, State, or County champion tree; and

(5) Trees having a DBH of:

(a) Twenty-four (24) inches or more; or

(b) Seventy-five percent (75%) of the DBH of the current State or County champion tree of that species.

D. Subsection C of this Section does not require retention of:

(1) A tree that is dead or diseased;

(2) A tree that has been substantially damaged through natural causes and is not expected to survive; or

~~(3) Unless it is located in an area of forest to be retained, a non-champion tree with a DBH of 30 inches or more.~~

FOH Note: We suspect what is meant by this which is in opposition to C (5) (b) is that it is close to a champion tree, but less than 75% in DBH. It is not necessary and is confusing.

E. No forest retention area easements shall be permitted on residential lots with a net tract of less than 20,000 square feet. No more than 25% of any lot with a net lot area between 20,000 square feet and 60,000 square feet shall be encumbered by a forest retention area easement. **NEW**

FOH Note: Variances were being asked for swimming pools in these easements. Too many developments had over half of a plat's backyard in the forest retention area. This is a good solution. And note that P&Z now uses 20,000 sq.ft.!!

§267-40. Reforestation.

A. There is a forest conservation threshold established for each land use category, as provided in Subsection B of this Section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from ratio of ¼ acre planted for every acre removed to a ratio of 2 acres planted for every acre removed.

FOH Note: Our position is that there should be no net loss of trees. One acre planted for one acre lost.

~~B. After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plan, and grading and sediment control activities and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the forest conservation account, according to the formula set forth in Subsection C and consistent with the following forest conservation threshold for the applicable land use category:~~ FOH Note: New developments in the Southern US quite often leave the trees around the houses. This means minimal reforestation is required. Trees are only removed for driveways, roads and the house-garage. They can easily be reforested within the development. This allowing the option of money spent instead of reforesting makes it far too easy to slash and doze and pay a little money. While we recognize the cost effectiveness of this method of development, we must mature and change our way of developing for the future.

Category of Use	Threshold Percentage
Natural resources uses	50%
Low-density and medium-density residential uses	40%
Institutional uses	30%
High-density residential uses	30%
Business and industrial uses	15%

C. Subject to Subsection D, for all existing forest cover measured to the nearest 1/10 acre cleared on the net tract area above the threshold established by this Section, the area of forest removed shall be reforested at a ratio of ~~1/4~~ one acre planted for every acre removed. FOH Note: Should be 1:1

D. Each acre of forest retained on the net tract area, above the threshold, shall be credited against the total number of acres required to be reforested under Subsection C.

~~E. For all existing forest cover measured to the nearest 1/10 acre, cleared on the net tract area, below the threshold established by this Section, the area of forest removed shall be reforested at a ratio of 2 acres planted for every acre removed. No clearing should be done below the allowable net.~~

F. No afforestation or reforestation shall be permitted on any residential lot with a net lot area of less than 20,000 square feet. No more than 25% of any lot with a net tract area between 20,000 square feet and 60,000 square feet shall be permitted for reforestation or afforestation planting. NEW

§267-41. Priorities and Time Requirements for Afforestation and Reforestation.

A. The required sequence for forest conservation, after techniques for retaining existing forest on the site have been exhausted, is as follows:

(1) Selective clearing and supplemental planting on site;
(2) On-site afforestation, ~~if economically feasible~~, using transplanted or nursery stock that is greater than 1½ inches DBH; This is where trees should be planted to protect runoff from the streams, rivers and Bay.

~~(3) On-site afforestation using whip and seedling stock (Added) with protective tree tubes (shelters) nets, stakes, etc ; This is entirely too small a tree to plant even with a tube and is at odds with (2)~~

(4) ~~and~~ On-site individual tree plantings conducted in accordance with §267-43 (Individual Tree Plantings), of this Article; Combine 3 and 4

(5) Landscaping of areas under a landscaping plan that establishes a forest that is at least 35 feet wide and covers at least 2,500 square feet of area;

~~(6) Off-site afforestation using transplanted or nursery stock that is greater than 1 ½ inches DBH;~~
~~(7) Off-site afforestation using whip and seedling stock (Added) with protective tree tubes (shelters);~~
We need to stop allowing off-site planting.

(8) Natural regeneration on-site; and
(9) ~~Natural regeneration off-site.~~

FOH Note: We do not support off-site planting where there is no soil disturbance.

B. A sequence other than the one described in Subsection A may be used for a specific project if necessary to achieve the objectives of the County Land Use Plan or County land use policies or to take advantage of opportunities to consolidate forest conservation efforts.

C. The following are priorities for reestablishment:

(1) Forest buffers adjacent to intermittent and perennial streams, to widths of at least 50 feet; should be greater of slope is above 15% SEVENTY-FIVE ??
(2) Forest corridors, connecting existing forests within or adjacent to the site, to widths of at least 300 feet where geographically possible; Corridors for wildlife, etc. need to be that width. Inserting “if Possible” at the end, nullifies the entire priority

(3) Forest buffers adjacent to critical habitat areas;
(4) Plantings in the Natural Resources District established under §267-62 (Natural Resource District);

(5) Plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K Value greater than 0.35, including the slopes of ravines or other natural depressions

(6) Buffers adjacent to areas of differing land use, where appropriate, or adjacent to highways or utility rights-of-way; and

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

D. A person required to conduct afforestation or reforestation under this Article shall accomplish the afforestation or reforestation in accordance with the schedule established by the Department in the approved forest conservation plan. The Department shall ensure that the schedule is structured to:

- (1) Require completion of the afforestation or reforestation within 2 years;
- (2) Provide an optimum opportunity for successful afforestation;
- (3) Avoid delay to development and construction activities; and
- (4) Take into consideration the phasing of the development project.

~~§267-42. Payment in Lieu of Afforestation and Reforestation.~~

DELETE THIS SECTION ENTIRELY

FOH Note: As a rule, we do not support the use of fee-in-lieu. The main objection is that it replaces the very real benefits of the requirement with a simple cash transaction. It effectively negates the requirement in all cases. We also note there is too little real accounting of where the money goes, when, for how long it remains, for what it is spent on.

A. If a person required to conduct afforestation or reforestation, under this Article, demonstrates, to the satisfaction of the Department, that reforestation or afforestation, on-site or off-site, cannot be reasonably accomplished, the person shall contribute money, (Added) to the County, at a rate of 40 cents per square foot of the area of required planting to the County.

B. Money contributed in lieu of afforestation or reforestation under this Subsection shall be paid within 90 calendar days after issuance of the grading permit or building permit for the development project, whichever occurs first.

C. Money contributed under this Section:

- (1) May be used only for reforestation and afforestation, including site identification, acquisition, and preparation;
- (2) Shall be deposited in a separate forest conservation account; and
- (3) Shall not revert to the general fund.

Omitted existing Para. C, pg. 99 existing Code, that requires the County to do afforestation or reforestation for which the money is deposited within 3 years after receipt of the money.

Omitted existing Para. D, pg. 99, existing Code, that requires money contributed under this section to remain in the account for 3 years and at the end of that time any portion not used shall be returned to the person who paid the money.

§267-43. Individual Tree Plantings.

A. Individual tree plantings conducted in accordance with §267-41 (Priorities and Time Requirements for Afforestation and Reforestation), of this Article shall be credited towards the remaining forest conservation requirement in an amount equal to 500 square feet for each individual tree planted.

Rewritten. Old: Individual tree plantings conducted in accordance with this section shall be credited towards the remaining forest conservation requirement in an amount equal to the square footage of the area of mature canopy of the individual trees planted. New: Individual tree plantings conducted in accordance with this section shall be credited towards the remaining forest conservation requirement in an amount equal to 500 square feet for each individual tree planted.

B. To qualify for a credit under this Section, the plantings shall:

- (1) Be conducted in accordance with a landscaping plan submitted with the forest conservation plan;
- (2) Be conducted in areas protected in accordance with §267-37 (Forest Conservation Plan), of this Article; and
- (3) Include trees of a caliper DBH of at least 1½ inches :

C. The landscaping plan shall include:

- (1) A list of the proposed tree species to be utilized;
- (2) The number of trees to be planted;
- (3) A calculation of the square footage for all individual trees planted; and
- (4) An overlay showing the location of the trees on the preliminary subdivision plan or the concept plan. :

Rewritten. Old: The landscaping shall include a calculation of the square footage of the mature canopy of the trees. New: The landscaping shall include a calculation of the square footage for all individual trees planted.

D. The location, spacing, and species of trees planted in accordance with this Section shall be as approved by the Department in the forest conservation plan, and the Department shall encourage plantings along streets, between buildings, in parking lots, and in other common-area sites where the plantings may provide buffering, energy conservation, and other environmental benefits. :

D. Planting under this Section shall be conducted in accordance with urban forestry standards recognized by the **Forestry Division** ~~Not sure it's called that any more~~ of the Maryland Department of Natural Resources. :

§267-44. Required Tree Species.

A. Tree species used for afforestation and reforestation shall be native to the County ~~and appropriate to the site~~, selected from a list of approved species established by the Department.

~~B. Tree species for individual tree plantings conducted in accordance with §267-43 (Individual Tree Plantings), of this Article shall be selected from a list of approved species established in the Forest Cover Conservation and Replacement Manual. ~~Delete –put in Landscaping~~~~

~~Omitted: Tree species for individual tree plantings . . . shall be native to the County and selected from a list of approved species established by the Dept.~~

~~Added: Tree species for individual tree plantings . . . shall be selected from a list of approved species established in the Forest Cover Conservation and Replacement Manual.~~

C. The Department may approve a request for permission to use a species that is not on the list of approved species if the request:

- (1) Is in writing;
- (2) Describes the circumstances that make use of the species appropriate; and
- (3) Is not based ~~solely in on~~ economic factors.

~~D. Omitted. (required on or before 12/31/91 the Dept. shall issue guidelines establishing a list of tree species to be used for aff/ref/and individual tree plantings.~~

§267-45. Surety for Forest Conservation.

A. Before receiving a grading permit or a building permit, a person required to conduct afforestation, reforestation, or individual tree plantings, under this Article, shall furnish surety in the form of a bond, an irrevocable letter of credit, or other security approved by the Department. The surety shall:

- (1) Assure that the afforestation, reforestation, and individual tree plantings 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 Department ~~under the direction of MD DNR~~, of afforestation, reforestation, and individual tree plantings;
- (3) If the development is scheduled to be constructed in phases, cover the portion of the development within the limits of disturbance delineated in the grading permit application; and
- (4) Be in a form and of a content approved by the County Attorney.

B. If after 1 growing season the afforestation, reforestation, and individual tree plantings meet or exceed the standards of the forest cover conservation and replacement manual, 2/3 of the amount of any cash bond that has been posted shall be returned. If the surety has been given in the form of a letter of credit, a surety bond, or another form of surety, the County shall notify the appropriate entity that liability has been reduced by 2/3.

C. If after 2 growing seasons, the afforestation, reforestation, and individual tree plantings meet or exceed the standards of the Forest Cover Conservation and Replacement Manual, the remaining amount of the cash bond, letter of credit, surety bond, or other surety shall be returned or released.

~~FOH Note: The Department should assess this. As written, anyone may attest to the plantings' status.~~

§267-46. Standards for Protecting Trees from Construction Activities.

A. Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Article:

- (1) All forest that is to be retained shall be clearly marked with flags, signs, or other materials approved by the Department;

- (2) Protection devices approved by the Department shall be installed **by the applicant at his cost**; and
- (3) The Department shall inspect the site to ensure that the marking and protection devices are in place.

B. ~~Unless approved within the Forest Conservation Plan~~, the following activities are prohibited within the dripline of a tree that is to be retained: **Changed “unless approved by the Department” to “approved within the Forest Conservation Plan.”** (referring to activities that are prohibited within the dripline of a tree that is to be retained)

- (1) Grading;
- (2) Filling;
- (3) Trenching;
- (4) Tunneling;
- (5) Storage of construction materials or equipment;
- (6) Placement or operation of vehicles, equipment, or construction trailers;
- (7) Sediment and erosion control devices; and
- (8) Any other activity that may result in soil compaction or damage to a tree.

FOH Note: These activities should never be approved

~~C. When granting approval for an activity listed in Subsection B, the Department shall require that appropriate actions to mitigate tree damage be undertaken, including such actions as root aeration, tree wells, and pruning.~~ Contradicts above B .

D. Omitted. (After consultation with Forest Div. of DNR, P&Z shall issue guidelines establishing standards before 12/31/91)

§267-47. Variances. No variances should be granted in this section. Delete 267-47

A. The Board of Appeals may grant a variance to this Article in accordance with this Section and §267-11 (Variances), of this chapter.

B. In granting a variance to this Article the Board shall issue specific written findings of fact demonstrating that the granting of the variance will not adversely affect water quality.

FOH Note: We find no reason to allow for variances of these regulations.

§267-48. Violations and Penalties.

A. A person who violates any provision of this Article, or any regulation or order adopted or issued under this Article, is liable for a penalty not exceeding \$1,000.00 which may be recovered in a civil action brought by the Department. Each day a violation continues is a separate violation.

B. A person who violates any provision of a forest conservation plan or an associated management plan, approved under this Article, is liable for a penalty of \$1.20 per square foot of the area found to be in violation of the plan or agreement, which may be recovered in a civil action brought by the Department. Each day a violation continues is a separate violation.

C. Money collected under Subsection B shall be deposited in the forest conservation account required by §267-41 (Priorities and Time Requirements for Afforestation and Reforestation), of this Article, and may be used by the Department for purposes related to implementing this Article.

D. A separate or individual accounting of money received by the Department under this section, and money spent under this section will be plainly charted and itemized and will be available to the public at any time.