

COUNTY ORDINANCE NO. 13-15

A BILL ENTITLED

AN ACT CONCERNING Planning Commission Review of Commercial Forestry Operations;

FOR THE PURPOSE of removing the requirement for Planning Commission review and approval of Commercial Forestry Operations in the Agricultural (AG) and Countryside (CS) zoning districts in Queen Anne’s County on property subject to Long-Term Protective Agreements or in deed restricted open space; and streamlining the review process for such operations;

BY AMENDING Sections 18:1-12, 18:2-16, 18:2-19 and 18:2-23 of the Code of Public Local Laws of Queen Anne’s County.

SECTION I

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF QUEEN ANNE’S COUNTY, MARYLAND that Sections 18:1-12.G., 18:2-16.B.(2)(d), 18:2-16.D.(2)(d), 18:2-19.A.(2)(a)[2] and 18:2-23.C. and D. of the Code of Public Local Laws be amended to read as follows:

PROPOSED AMENDMENT TO CHAPTER 18: 1 TEXT

§ 18:1-12. Permitted uses in open space.

A. The following are permitted or conditional *uses* allowed in *open space* areas required by this Chapter 18:1. Any *use* not specifically listed below is not permitted in required *open space* areas. [Amended 6-12-2007 by Ord. No. 06-22; 8-19-2008 by Ord. No. 08-15]

A	B	C
Non-		<i>Single-Family</i>
contiguous	<i>Multifamily/</i>	<i>Cluster</i>
s	<i>Manufactured Development</i>	
Open	<i>Home</i>	
Space/TDR	Community/	
	Master	
	Planned	
	Residential	
	Development	

Allowable Uses			NC	All Other
<i>Agricultural uses</i>	Y	N	Y	Y
<i>Fields or pastures</i>	Y	Y	Y	Y
<i>Accessory building</i>	Y	Y	Y	C
<i>Commercial forestry</i>	Y	N	C	C
<i>Non-commercial forestry</i>	Y	N	Y	Y
<i>Commercial stables</i>	Y	N	C	C
<i>Public recreation</i>	Y*	N	N	N
<i>Private stables</i>	Y	N	Y	Y
<i>Nurseries</i>	Y	C	C	Y
<i>Farm employee dwelling</i>	Y/N	N	N	Y

Drainage structures	Y	C	Y	Y
Minor extraction that does not require the issuance of a surface mining permit in accordance with COMAR 26.21.01.08 (C), (D), (E) and (F)	Y	N	C	Y
Minor extraction and dredge disposal uses that require issuance of a surface mining permit on a transferor parcel, provided the parcel has not been subject to a cluster subdivision nor is the parcel a developed parcel for noncontiguous development	Y	N	C	Y
Minor extraction and dredge disposal uses that require issuance of a surface mining permit on a parcel that has been subject to a cluster subdivision or a parcel that is a developed parcel for noncontiguous development	C	N	C	C
Shooting clubs	C	N	C	C
Outdoor recreation	C	Y**	C	C

NOTES:

* Public recreational uses that include more than 10,000 square feet of enclosed floor area or are greater than one story in height shall be allowed only as a conditional use.

** See §§ 18:1-26 to 18:1-33, district regulations, for additional open space requirements.

~~*** Commercial forestry requires Planning Commission review and approval in accordance with Subsection G of this section and §§ 18:2-16, 18:2-19, and 18:2-23 of this Chapter 18.~~

- B. Open space required by this Chapter 18 may not be provided on cluster lots created through cluster subdivision or planned residential development.
- C. The landowner shall only deed restrict the amount of open space land required to support the proposed development. Deed restricted area shall be graphically depicted on the plat with metes and bounds. (This section does not apply to apartment development as defined in Chapter 18App, Appendix A: Glossary.)
- D. For cluster subdivisions only, the open space may be administratively reconfigured to accommodate changes for building pad sites, perc sites, and lot lines, but may not be used to create additional lots. [Amended 5-13-2008 by Ord. No. 08-03]
- E. The location of the deed restricted land shall be labeled on the plat. (Example: AG cluster open space or noncontiguous open space.)
- F. Lands not included in the subdivided lots, used for roads, or deed restricted open space shall be labeled as "future development potential" on plats.
- ~~G. Commercial forestry located in deed restricted open space in the AG and CS Districts will require Planning Commission review and approval with a formal recommendation from the County Forestry Board and/or a Department of Natural Resource Forester. The proposed commercial harvest shall be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate. [Added 6-12-2007 by Ord. No. 06-22]~~

PROPOSED AMENDMENT TO CHAPTER 18: 2 TEXT

§ 18:2-16. Payments by credits into an approved forest mitigation bank.

- A. Use of available forest mitigation bank.
 - (1) If a person subject to this Chapter 18:2 demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation on site or off site cannot be reasonably accomplished, the person may contribute credits from an available and approved forest mitigation bank within Queen Anne's County. A credit is required for each 1/10 acre of an area of required planting.
 - (2) The credits shall be debited from an available and approved forest mitigation bank prior to subdivision recordation or issuance of any required permit.
- B. Establishing forest mitigation banks on vacant land.
 - (1) A person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this Chapter 18:2.
 - (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* 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) Commercial forestry in the AG and CS Districts will require Planning Commission review and approval with a formal recommendation from the County Forestry Board and/or a Department of Natural Resource Forester. [Amended 9-7-2004 by Ord. No. 04-34; 6-12-2007 by Ord. No. 06-22]~~

C. Planting requirements for banks being created on vacant land.

- (1) Banks shall be a mix of native plant materials for afforestation or reforestation. As much as possible, plant material shall be *nursery* or transplanted stock that has a *caliper* greater than 1 1/2 inches. Monocultures are not permitted; and
- (2) Trees shall be planted that establish or enhance forested buffers adjacent to intermittent streams, establishing a buffer width of no less than 50 feet or adjacent to perennial streams, establishing a buffer width of no less than 100 feet; or
- (3) The bank shall establish or increase existing forested corridors, which, where practical, should be a minimum of 300 feet in width to facilitate wildlife movement and to connect existing forests within or adjacent to the *site*; or
- (4) The bank shall establish or enhance forest buffers adjacent to critical habitats where appropriate; or
- (5) The bank shall establish or enhance areas in 100-year floodplains; or
- (6) The bank shall stabilize slopes of 25% percent or greater; or
- (7) The bank shall stabilize slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions; or
- (8) The bank shall establish buffers adjacent to areas of differing land *use* where appropriate, or adjacent to highways or utility rights-of-ways; or
- (9) The bank shall establish forest areas adjacent to existing forest to increase the overall area of contiguous forest cover, when appropriate.

D. Establishing forest mitigation banks on existing forested properties.

- (1) A *person* may create a forest mitigation bank on existing forest from which *applicants* may purchase credits to meet the afforestation and reforestation requirements of this Chapter 18:2.
- (2) The forest mitigation bank shall:
 - (a) Be 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* 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) Commercial forestry in the AG and CS Districts will require Planning Commission review and approval with a formal recommendation from the County Forestry Board and/or a Department of Natural Resource Forester. [Amended 9-7-2004 by Ord. No. 04-34; 6-12-2007 by Ord. No. 06-22]~~

(e) Acquisition of an off-site protective *easement* for existing forest areas may not exceed fifty percent (50%) of the area of forest cover protected.

E. Plant and location requirements for a proposed mitigation bank on existing forested properties.

- (1) Banks shall contain a mix of native plant materials. As much as possible, plant material shall have a *caliper* greater than 1 1/2 inches. Monocultures are not permitted; and
- (2) The bank shall be located in an area that will enhance forested buffers adjacent to intermittent streams, establishing a buffer width of no less than 50 feet or adjacent to perennial streams, establishing a buffer width of no less than 100 feet; or
- (3) The bank shall be located in existing forested corridors which, where possible, should be a minimum of 300 feet in width to facilitate wildlife movement and to connect existing forests within or adjacent to the *site*; or
- (4) The bank shall be located in an area that will enhance forest buffers adjacent to critical habitats where appropriate; or
- (5) The bank shall be located in an area that will enhance areas in 100-year floodplains; or
- (6) The bank shall be located in an area that will stabilize slopes of 25% or greater; or
- (7) The bank shall be located in an area that will stabilize slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions; or
- (8) The bank shall be located in an area that will establish buffers adjacent to areas of differing land *use* where appropriate, or adjacent to highways or utility rights-of-way; or
- (9) The bank shall be located in an area that will establish forest areas adjacent to existing forest to increase the overall area of contiguous forest cover, when appropriate.

F. A *person* proposing to create a forest mitigation bank shall submit the following:

- (1) Completed application, on a form approved by the *Department*, which has been signed by an authorized individual in conformance with COMAR 08.19.04.02I.
- (2) Forest mitigation bank plan which contains the following:
 - (a) A forest stand delineation which meets the requirements contained in § 18:2-9.
 - (b) For banks being created on vacant land, a detailed afforestation or reforestation plan shall be submitted, which shall include a timetable and description of the *site* and soil preparation needed, species, size, and spacing to be utilized. This plan must be prepared by a licensed Maryland forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

(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) A title report or other assurances that the property is not encumbered by any *covenants* or other types of restrictions which would impair the property's use as a forest mitigation bank and there is legally sufficient access to the forest mitigation bank *site* which can be used by the *Department* and its assignees to inspect the forest mitigation bank.
 - (f) A description of the system to be used by the *person* owning and operating the forest mitigation bank to identify and keep track of which portions of the bank have been debited to meet an *applicant's* off-site afforestation and reforestation requirements.
- G. Two year maintenance agreement for banks being created on vacant land.
- (1) The *applicant* proposing a forest mitigation bank shall provide a signed, two-year maintenance agreement which addresses the following:
 - (a) Sets forth how the areas afforested or reforested will be maintained to ensure protection and satisfactory establishment
 - (b) Includes watering and reinforcement planting provisions if survival falls below required standards.
 - (c) Addresses the requirements for a two-year maintenance agreement as outline in the Forest Conservation Technical Manual.
- H. Agreement with the *Department*. The owner of an approved forest mitigation bank shall enter into an agreement with the *Department*. The agreement shall contain the following:
- (1) The approved reforestation or afforestation plan
 - (2) The approved system for marking and tracking which portions of the bank have been debited.
 - (3) An acknowledgement that the bank may not debit any portion of the afforested or reforested land until two years of successful growth has been achieved (confirmed by the *Department*) unless the banker has planted 25% more area than the area of the debited *tract* and posted a bond or alternate form of security.

§ 18:2-19. Protective agreements.

A. In general.

- (1) Long-term protective agreements are legally binding devices in effect at all times that will ensure those areas retained, afforested, and/or reforested are limited to *uses* that are consistent with forest conservation. [Amended 6-12-2007 by Ord. No. 06-22]
- (2) Protective agreements include:
 - (a) Forest conservation and management agreements: [Amended 9-7-2004 by Ord. No. 04-34; 6-12-2007 by Ord. No. 06-22]
 - [1] Long-term protective agreements associated with a *subdivision* or *site plan* shall only permit the harvesting of the protected existing or proposed forest which is protected under the agreement as outlined in a timber harvest plan which has been prepared by a licensed, professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.

[2] ~~Commercial forestry in the AG and CS Districts on existing or proposed forest that is protected under a long-term protected agreement and located in deed-restricted open space will require Planning Commission review and approval with a formal recommendation from the County Forestry Board and/or the Department of Natural Resources Forester. The proposed commercial harvest shall be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.~~

(b) Other legally binding protective agreements, including:

- [1] *Covenants* running with the land;
- [2] Deed restrictions;
- [3] Conservation *easements*;
- [4] Land trusts; and
- [5] Other long-term protective measures that are approved by the *Department*.

(c) Approved forest management plans that:

- [1] Are prepared by a licensed forester in accordance with the requirements for a forest management plan found in the Forest Conservation Technical Manual; and
- [2] Meet the requirements of Subsection B of this section.

B. Forest management plans.

(1) A forest management plan:

- (a) Shall be legally binding from the date of approval;
- (b) Shall be prepared by a licensed professional forester;
- (c) Shall be submitted to the Department of Natural Resources forester assigned to the county where the property is located; and
- (d) May be amended periodically, as provided in Subsection B(4), if there is a change in *site* conditions or landowner objectives.

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

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

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

- (a) *Amendments* shall be prepared by a licensed professional forester;
- (b) The *amendment* shall be submitted to the Department of Natural Resources forester assigned to the county where the property is located;
- (c) The Department of Natural Resources forester shall review the *amendment* to ensure that it is complete and consistent with the state forest conservation program or this Chapter 18:2;
- (d) The Department shall notify the *applicant* as to whether the *amendment* has been approved; and

(e) Once approved, the *applicant* shall sign the *amendment*.

§ 18:2-23. Commercial timber harvests. [Amended 9-7-2004 by Ord. No. 04-34; 6-12-2007 by Ord. No. 06-22]

- A. Timber harvest plan; general requirements. Any commercial timber harvesting activity involving more than one *acre* of forest in a one-year period shall submit a timber harvest plan before the cutting begins.
- B. Procedure. A *person* may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan, provided that the harvest:
- (1) Is consistent with the intent of an approved forest management plan, forest conservation and management agreement, or other long-term protective agreement;
 - (2) Is consistent with the intent and requirements of the approved FCP;
 - (3) Is subject to a timber harvest plan that:
 - (a) Is prepared by a licensed professional forester, and
 - (b) Remains in effect for two years.
- ~~C. Long term protective agreements and deed restricted *open space* in the AG and CS Districts. Commercial forestry in the AG and CS Districts on existing or proposed forest that is protected under a long term protective agreement and located in deed restricted *open space* will require *Planning Commission* review and approval with a formal recommendation from the County Forestry Board and/or a Department of Natural Resource Forester. The proposed commercial harvest shall be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.~~
- ~~D. Long term protective agreements in association with approved subdivisions or site plans in the AG and CS Districts. Commercial forestry in the AG and CS Districts on existing or proposed forest that is protected under a long term protective agreement in association with an approved subdivision or site plan will require *Planning Commission* review and approval with a formal recommendation from the County Forestry Board and/or a Department of Natural Resource Forester. The proposed commercial harvest shall be outlined in a timber harvest plan that has been prepared by a licensed professional forester and approved by a Department of Natural Resources Forester and/or the County Forestry Board, as appropriate.~~

SECTION II

BE IT FURTHER ENACTED that this Ordinance shall take effect on the forty-sixth (46th) day following its enactment.

INTRODUCED BY: Commissioner Dunmyer

DATE: June 11, 2013

PUBLIC HEARING DATE: July 23, 2013 @ 6:10 p.m.

VOTE: 5 Yea 0 Nay

DATE OF ADOPTION: August 13, 2013

EFFECTIVE DATE: September 28, 2013