

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2011 Legislative Session, Legislative Day No.: June 28, 2011

Bill No.: 1204

Expiration Date: September 1, 2011

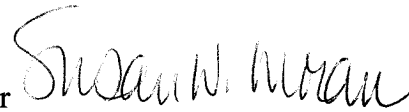
Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO AMEND THE TALBOT COUNTY CODE, CHAPTER 73, FOREST CONSERVATION, TO ADDRESS LEGISLATIVE CHANGES AS REQUIRED BY SENATE BILL 666 AND SENATE BILL 914, STATE OF MARYLAND DEPARTMENT OF NATURAL RESOURCES FOR LOCAL FOREST CONSERVATION PROGRAM COMPLIANCE AND TO AMEND THE COUNTY FEE SCHEDULE FOR FOREST CONSERVATION

By the Council: June 28, 2011

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, July 26, 2011 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 N. Washington St., Easton, Maryland 21601.

By Order



Susan W. Moran, Secretary

A BILL TO AMEND THE TALBOT COUNTY CODE, CHAPTER 73, FOREST CONSERVATION, TO ADDRESS LEGISLATIVE CHANGES AS REQUIRED BY SENATE BILL 666 AND SENATE BILL 914, STATE OF MARYLAND DEPARTMENT OF NATURAL RESOURCES FOR LOCAL FOREST CONSERVATION PROGRAM COMPLIANCE AND TO AMEND THE COUNTY FEE SCHEDULE FOR FOREST CONSERVATION

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that § 73 of the Talbot County Code entitled "Forest Conservation" is amended as set forth herein.

KEY

UnderliningAdded to existing law by amendment.

~~Strikethrough~~.....Deleted from existing law by amendment.

* * *Existing law or bill unaffected.

§73-2. Definitions.

* * *

IMMEDIATE FAMILY -- Father, mother, son, or daughter.

* * *

§73-3. Applicability.

A. Exemptions. It is the intent of Talbot County to protect forest resources in a manner which is least burdensome to residents wishing to improve their property. The following is a list of activities which typically cause negligible forest disturbance and are therefore exempt from this chapter.

* * *

(13) The construction and maintenance of linear County utilities, such as drainage ditches, water and sewer lines, telephone lines, cable television lines, natural gas and electrical power lines, provided that the forest area cut or cleared is less than 20,000 square feet and is conducted to minimize the loss of forest.

(14) County road construction activities where public funds are used, provided that the forest area cut or cleared is less than 20,000 square feet and is conducted to minimize the loss of forest.

* * *

B. Exemptions requiring a declaration of intent. The following development or activities are exempt from the requirements of this chapter, provided that a declaration of intent is filed with the Department in accordance with § 73-3C of this chapter.

- (1) Any residential construction conducted on any single lot 40,000 square feet or greater in size, where such lot is legally existing as of the effective date of this chapter, if the activity: [Amended 4-9-2002 by Bill No. 858]
 - (a) Does not result in the cumulative cutting, clearing, or grading of 20,000 square feet or more of forest;
 - (b) Does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this chapter; and
 - (c) Is the subject of a declaration of intent filed with the Department, as provided for in § 73-3C herein, stating that the lot will not be the subject of a regulated activity within five years of the cutting, clearing, or grading of forest.
- (2) Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, if the activity results in the cutting, clearing, or grading of 40,000 square feet or greater of forest within a one-year period. However, the applicant may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in this chapter that includes:
 - (a) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five years from the date of the declaration; and
 - (b) A sketch map of the property which shows the area to be cleared.
- (3) An activity, including subdivision, required for the purpose of constructing a single-family dwelling unit intended for the use of the owner, or a member of the owner's immediate family, if the activity:
 - (a) Does not result in the cutting, clearing, or grading of 20,000 square feet or greater of forest; and
 - (b) The lot(s) being created are subject to a declaration of intent which provides for a revocation of the exemption if the lot is transferred to anyone other than an immediate family member within five years of the declaration.

* * *

- (6) The Department may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
 - (a) Meet the retention, afforestation and reforestation requirements established in this chapter;

- (b) Pay a penalty for noncompliance established by fee schedules approved by the County Council of Talbot County per square foot of forest cut or cleared;
- (c) Be subject to other enforcement actions appropriate under this chapter; or
- (d) Comply with a stop-work order until a declaration of intent is filed with the Department.

* * *

§73-7. Forest Conservation Plans.

A. Once a forest stand delineation plan has been approved by the Department, a forest conservation plan shall:

* * *

- (4) Give priority to retaining existing forest on the site, and if these forests cannot be retained, then the applicant must qualify for a variance from the Planning Officer by demonstrating:
 - (a) How techniques for forest retention have been exhausted;
 - (b) Why any priority areas as defined in § 73-10B(2)(a) through (e) cannot remain undisturbed by proving:
 - [1] Special features of the site or other circumstances exist that would result in unwarranted hardship to the applicant;
 - [2] Implementation is designed in a manner consistent with the spirit and intent of this Chapter; and
 - [3] The granting of a variance will not adversely affect water quality; and
 - (c) How any required afforestation or reforestation will comply with the requirements specified in § 73-12 of this chapter; or
 - (d) That the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished and therefore, a fee-in-lieu of the required planting shall be made into the Talbot County Conservation Fund.

* * *

§73-9. Special Provisions for linear projects.

A. Applicability.

- (1) Linear projects not exempted from the requirements of this chapter pursuant to § 73-3A shall meet the requirements enumerated in this section.
- (2) Linear projects subject to the requirements of this section include:
 - (a) The construction and maintenance of linear County utilities, such as drainage ditches, water and sewer lines, telephone lines, cable television lines, natural gas and electrical power lines, and the forest area cut or cleared is equal to or

greater than 20,000 square feet; and

- (b) County road construction activities where public funds are used and the forest area cut or cleared is equal to or greater than 20,000 square feet. In cases where state funds are used for County road construction activities, the activities are subject to Natural Resources Article § 5-103, Annotated Code of Maryland, and the Department of Natural Resources must be contacted for review of the project.

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§73-10. Afforestation and Retention.

* * *

B. Retention.

- (1) Trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, steep slopes 15% or greater, nontidal wetlands and their buffers and critical habitats; and contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site shall be:
 - (a) Considered priority for retention and protection;
 - (b) 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 reasonably be altered.
- (2) 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 the applicant qualifies for a variance in accordance with §73-7A(4):
 - (a) 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. §§ 1531 through 1544 and in 50 CFR Part 17;
 - [2] The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2A-01 through 10-2A-09, Annotated Code of Maryland; and
 - [3] COMAR 08.03.08.
 - (b) 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 Department as a national, state, or County champion tree;
- (c) Any tree having a diameter measured at 4.5 feet above the ground of:
 - [1] Thirty inches or more; or
 - [2] Seventy-five 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 Department of Natural Resources.
- (d) Other sensitive areas as determined by the Department and as amended to this chapter.

* * *

§ 73-14. Forest Conservation Fund.

- A. There is an established Talbot County Forest Conservation Fund.
- B. If a person subject to this chapter demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation on site or off site cannot be reasonably accomplished, the person shall contribute money, at a rate established by the County Council fee schedule, per square foot of the area of required planting into the Talbot County Forest Conservation Fund. For a project inside a Priority Funding Area the rate shall be 20% lower than the rate established above.
- C. Money contributed instead of afforestation or reforestation under this section shall be paid within 90 calendar days after final development project approval.
- D. Money deposited in the Talbot County Forest Conservation Fund, which is collected under § 73-14B or § 73-18A:
 - (1) May be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, and preparation, maintenance of existing forests and achieving urban canopy goals;

* * *

§ 73-18. Administration.

- A. Enforcement.
 - (1) The Department may issue a stop-work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.
 - (2) Noncompliance fees.
 - (a) A person found to be in noncompliance with this chapter, regulations adopted under this chapter, the forest conservation plan, or the associated two-year

maintenance or long-term protection agreement shall be assessed by the Department the penalty as set by the County Council fee schedule per square foot of the area found to be in noncompliance with required forest conservation. Before such action, the violator shall be notified in writing and allowed an opportunity for a hearing as under § 73-17A.

- (b) Money collected under Subsection A(2)(a) shall be deposited in the Talbot County Forest Conservation Fund as required by § 73-14 of this chapter, and may be used by the Department for purposes related to implementing this chapter.

* * *

§73-19. Amendments, annual and biennial review of program.

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B. Annual report.

- (1) On or before March 1 of each year, after the effective date of this chapter, the Department shall prepare, and the County submit to the Department of Natural Resources a report on:
 - (a) The number, location, and type of projects subject to the provisions of this chapter;
 - (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;
 - (d) The costs of implementing the Talbot County Forest Conservation Program;
 - (e) The size, location, and protection of any local forest mitigation banks which are created under a local or State program;
 - (f) The number, location, and types of violations and type of enforcement activity conducted in accordance with this subtitle; and
 - (g) To the extent practicable, the size and location of all conserved and planted forest areas, submitted in an electronic geographic information system or computer aided design format.

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PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Bill No. 1204 having been published, a public hearing was held on Tuesday, July 26, 2011 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: July 26, 2011

By Order Susan W. Moran
Secretary

Bartlett - Aye

Hollis - Aye

Pack - Aye

Price - Aye

Duncan - Aye