

## Comparison of Major Differences between the Existing FCL and the DEP Proposal

#	Issue	Current FCL	DEP Proposal
1	Resources regulated	Forests	Forests and Trees
2	Trigger for application of regulations	Tract of land must be 40,000 sq. ft. or greater (unless the activity would disturb a forest in an environmental buffer or special protection area, or a champion tree).	Activity on any size lot requiring a sediment control permit (or any disturbance to a champion tree).
3	Trigger for mitigation for loss of forest	Disturbance to more than 20,000 sq ft of forest.	Disturbance to any forest.
4	Trigger for mitigation for loss of trees	n/a	Disturbance to any trees
5	Responsibility for review of development plans	M-NCPPC	<ul style="list-style-type: none"> <li>• On all lots equal to or greater than 40,000 sq ft: M-NCPPC</li> <li>• On all lots less than 40,000 sq ft: DPS</li> </ul>
6	Method of identifying resources on site	Completion of an NRI/FSD by a qualified professional.	<ul style="list-style-type: none"> <li>• Completion of an NRI/FSD by a qualified professional.</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Overlays of the forest and tree canopy GIS layers.</li> </ul>
7	Plan review process - Forests	<p>In general:</p> <ul style="list-style-type: none"> <li>• Applicant submits NRI/FSD to document existing conditions on the site.</li> <li>• M-NCPPC reviews and approves NRI/FSD.</li> <li>• Applicant submits forest conservation plan (FCP) developed to identify: <ul style="list-style-type: none"> <li>○ areas to conserve;</li> <li>○ amount of mitigation and afforestation required; and</li> <li>○ locations suitable for mitigation or afforestation.</li> </ul> </li> <li>• M-NCPPC reviews and approves FCP.</li> </ul>	<p>In general:</p> <ul style="list-style-type: none"> <li>• Applicant submits NRI/FSD to document existing conditions on the site.</li> <li>• M-NCPPC reviews and approves NRI/FSD.</li> <li>• Applicant submits forest conservation plan (FCP) developed to identify: <ul style="list-style-type: none"> <li>○ areas to conserve;</li> <li>○ amount of mitigation and afforestation required; and</li> <li>○ locations suitable for mitigation or afforestation.</li> </ul> </li> <li>• M-NCPPC reviews and approves FCP.</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Applicant submits the following: <ul style="list-style-type: none"> <li>○ NRI to document existing conditions on the site;</li> <li>○ stormwater management plan that includes limits of disturbance; and</li> <li>○ GIS layer of forest cover.</li> </ul> </li> <li>• Applicant determines disturbance to forest based on limits of disturbance and GIS layer.</li> <li>• DPS reviews and approves calculation of amount of disturbance to forest.</li> </ul>

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8	Plan review process - Trees	n/a	<p>In general:</p> <ul style="list-style-type: none"> <li>• Applicant submits NRI/FSD to document existing conditions on the site.</li> <li>• Applicant determines disturbance to trees based on limits of disturbance and NRI/FSD.</li> <li>• M-NCPPC reviews and approves NRI/FSD and calculation of amount of disturbance to trees.</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Applicant submits the following: <ul style="list-style-type: none"> <li>○ NRI to document existing conditions on the site;</li> <li>○ stormwater management plan that includes limits of disturbance; and</li> <li>○ GIS layer of tree canopy cover.</li> </ul> </li> <li>• Applicant determines disturbance to trees based on limits of disturbance and GIS layer.</li> <li>• DPS reviews and approves calculation of amount of disturbance to trees.</li> </ul>
9	Calculation of amount of mitigation – Forests	Mitigation equals the area of forest disturbed less a credit for any area of forest saved in an easement. This is adjusted based on rates determined by land use categories (see below). Land use categories that allow for higher density also allow for less forested area.	Mitigation based on area of forest disturbed.
10	Calculation of amount of mitigation – Trees	n/a	Mitigation based on area of trees disturbed.
11	Mitigation rates for both forests and trees	The rate varies for different approaches to mitigation. (The fee-in-lieu rate is set at \$1.00 per sq. ft. This is the estimated cost of purchasing plant material, installing plant material, mulching and watering, controlling invasive plant species, reducing damage from white-tailed deer browsing, surveying for survival, and replacing dead plants for 2 years.)	A fee structure that calculates the total mitigation fees for a site based on area of disturbance of both forest and trees is available in a spreadsheet. This fee structure allows for fees to increase incrementally as disturbance increases. Also, it allows for increases in fees for off-site mitigation. Minimum fees collected for mitigation will be set at the minimum required by State, currently \$0.30 per sq. ft. and increase with disturbance.
12	Form of mitigation	Planting and maintenance by developer; and/or establishment or purchase of easements on existing forest.	Payment of fees; and/or establishment of easements on existing forest or land to be planted.

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13	Easements	Easements allowed and expected.	<ul style="list-style-type: none"> <li>• Properties reviewed by M-NCPPC – Easements allowed and expected.</li> <li>• Properties reviewed by DPS – Easements not allowed.</li> </ul>
14	Afforestation requirements	<p>A site with less than 20% of the net tract area in forest cover must be afforested in accordance with the afforestation requirements.</p> <ul style="list-style-type: none"> <li>• Agricultural and 1-5 ac lots = 20%</li> <li>• All others = 15%</li> <li>• All paid at the same rate as reforestation or \$1.00 per sq. ft.</li> </ul>	Fees collected for afforestation will be set at the minimum required by State, currently \$0.30 per sq. ft. Requirements for percentage of net tract areas must remain as dictated by the State and are the same as current FCL.
15	Responsibility for planting	Developer	County/M-NCPPC
16	Maintenance period following planting	Following planting, 2 years of maintenance is required.	Maintenance as needed until planting is established appropriately for forest and tree establishment.
17	Financial security for mitigation requirements (bonds)	Financial security must be provided prior to any land disturbing activity in an amount equal to the estimated cost of afforestation, reforestation, and maintenance.	No financial security is required.
18	Timing of or deadlines for mitigation	The deadline for plant installation for both afforestation and reforestation requirements are one year or 2 growing seasons after a development project is complete.	Payment of fees must be provided or a payment plan must be approved prior to any land disturbing activity.
19	Land use categories	Land Use Categories are used to set forest conservation thresholds and afforestation requirements for different land uses and housing density. For example, categories include agricultural and resource areas, high-density residential areas, and commercial and industrial use areas.	No Land Use Categories are considered. All forests and canopy are considered equal.
20	Forest Conservation Threshold	Reforestation thresholds vary based on Land Use Categories. For forest removed above the applicable threshold, mitigation at a certain rate is required. For additional removal of forest below the threshold, more extensive mitigation is required.	Thresholds are not used. If forests or canopy are disturbed then mitigation is required.
21	Reforestation Ratios	When forest is cleared above the threshold, the requirement is 1/4 acre established for every 1 acre removed. When forest is cleared below the threshold, the requirement is 2 acres established for every 1 acre removed.	Ratios are not used. If forests or canopy are disturbed then mitigation is required.

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22	Champion Trees	<p><i>Champion tree</i> means the largest tree of its species in the County, as designated by the County Forest Conservancy District Board or its designee.</p>	<p><i>Champion tree</i> means the largest known tree of its species in the County, including the critical root zone of the tree, as nominated by the Montgomery Forest Conservancy District Board and identified in the register of champion trees. Non-native invasive species, identified by the Maryland Invasive Species Council are not included.</p>