

Procedures in Accounting for Local Forest Conservation Funds

Washington County, Maryland

October 2019

In accordance with the Natural Resources Article of the Annotated Code of Maryland, the Washington County Department of Planning and Zoning, administers the collection, accounting, and expenditure of the Local Forest Conservation Fund. Physical implementation of forest conservation mitigation related to expenditure of forest conservation funds is conducted by the Washington County Soil Conservation District (WCSCD). Appendix A of this document contains the currently executed Memorandum of Understanding between the two agencies.

Accounting Procedures

Under certain conditions an applicant may elect to use the PIL as mitigation through the Express Procedure described in Section 6A of the Washington County Forest Conservation Ordinance. Otherwise the Planning Commission must approve the use of PIL mitigation after evaluating an applicant's request and explanation of why a higher mitigation method cannot be accomplished. At such time an applicant receives approval to mitigate forest conservation requirements using a payment-in-lieu of planting method (PIL), a letter is sent informing the responsible party of the exact monetary requirement. Funds are accepted by the Department of Plan Review and Permitting prior to approval of the project being reviewed and mitigated. When funds are received, they are first logged into the County permit tracking software and then deposited into a dedicated account administered by the Washington County Department of Budget and Finance. This account is exclusively used for forest conservation mitigation.

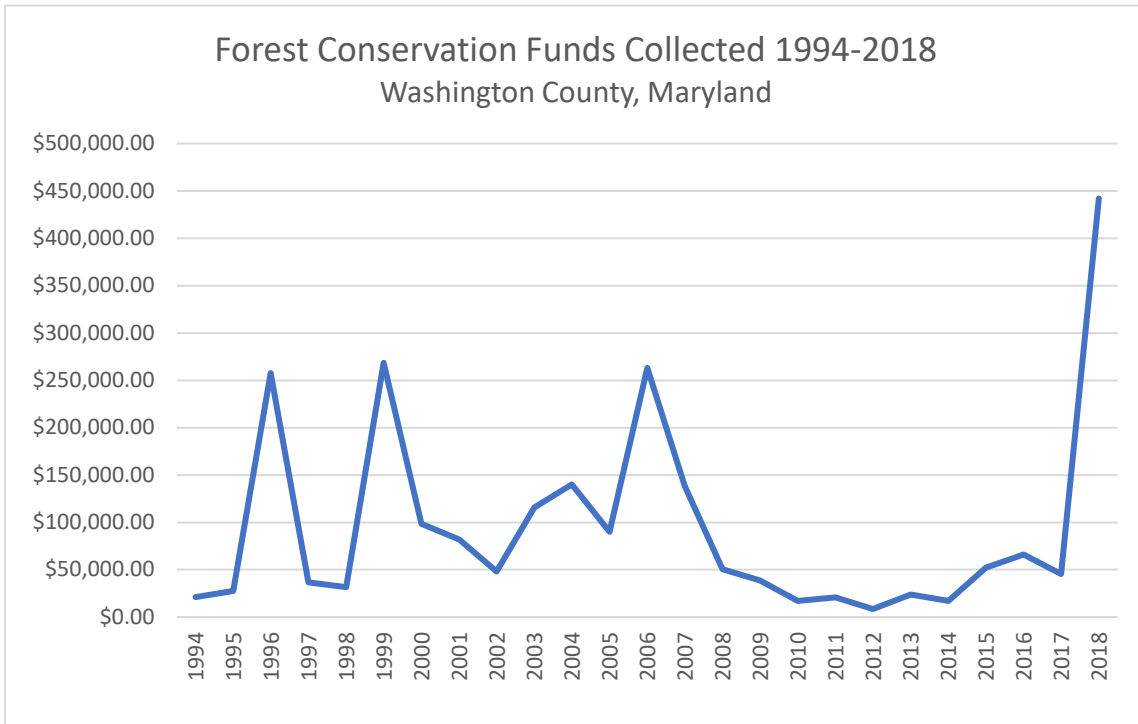
At such time the Washington County Soil Conservation District identifies an eligible project for forest mitigation, notice is sent to the Department of Planning and Zoning requesting approval from the Planning Commission and the Board of County Commissioners to move forward with the project in accordance with the procedures identified in the general plan of project management and in accordance with the State Forest Conservation Act.

After the project receives approval, the WCSCD works with the property owner and contractor to complete the necessary work to implement the easement. Detailed invoices are submitted by WCSCD to the Department of Planning and Zoning for review and payment. Information included in the invoice identify costs for acquisition, surveying, site preparation, tree stock, short- and long-term maintenance needs, signage, fencing, labor and/or other expenditures depending on the type of mitigation method used (planting vs. retention). Planning and Zoning then forwards the information to the Department of Budget and Finance and requests that funds be released to WCSCD.

Funds Collected

Since 1994 the County has collected over \$2.4 million in forest conservation funds to

mitigate for nearly 480 acres of forest needed to comply with the Forest Conservation Act. As shown in the chart below, the amount of funds collected each year is highly erratic. Due to the economic downturn in the early and mid-2000s, fund collection was very low between 2009 and 2015.



In August 2017 the State of Maryland passed new legislation tripling the mitigation fee from \$0.10 per square foot of mitigation needed to \$0.30 per square foot for mitigation in Priority Funding Areas (PFAs) and \$0.36 per square foot for mitigation outside of PFAs. As the economy continues to rebound the County would expect slightly higher fund balances as a result. The large spike seen in 2018 is related to a large economic development project in the northern part of the Urban Growth Area that was granted approval to use the payment in lieu of afforestation mitigation method. While this is not the largest amount of acreage contributing to the forest conservation funds in a calendar year, the tripling of the mitigation fee makes this the largest contribution the County has received.

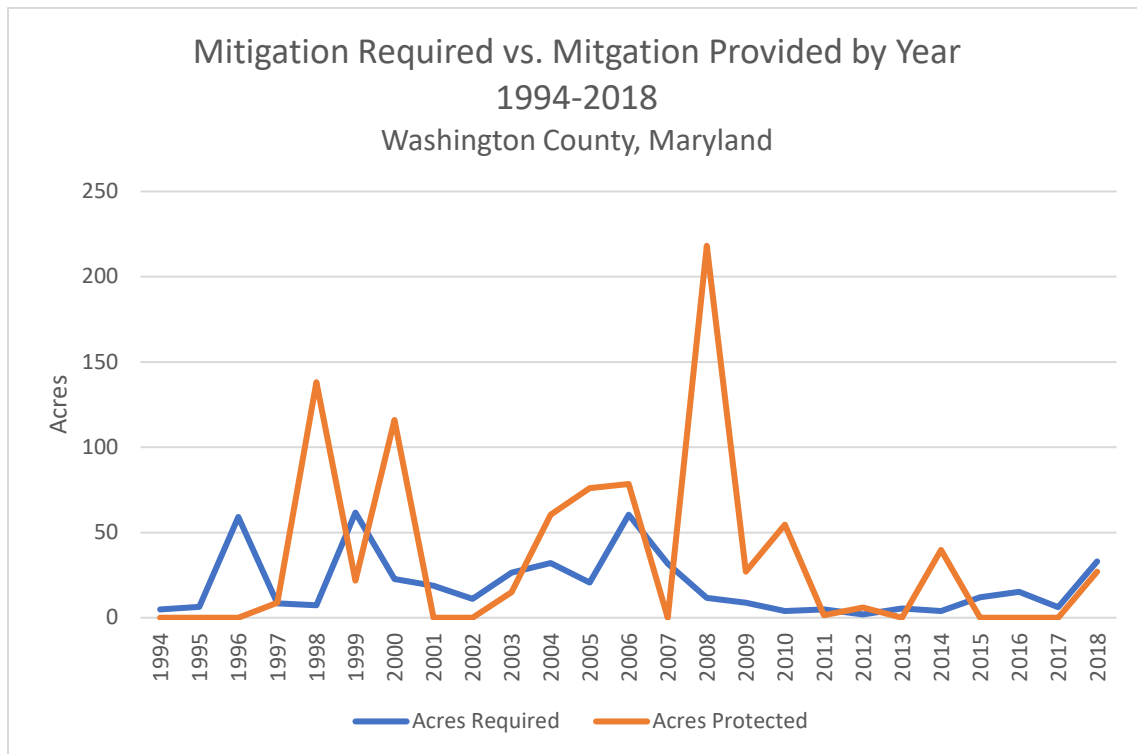
Funds Expended

It is the goal of WCSCD to expend forest conservation funds within two years of receiving funding. There are several limiting factors as to how quickly forest conservation funds can be spent. The first limiting factor is participation from willing land owners to encumber their property with a forest conservation easement. While WCSCD has been successful in the past due to existing relationships with property owners related to other regulatory processes such as soil conservation plans, forest management plans, stream restoration projects, etc. it has not been easy to convince owners to voluntarily encumber their property.

The second limiting factor is the unpredictable variations in funds collected for in any given year. As shown in the chart below it may require a couple of years for mitigation funding to build to a point that WCSCD can obtain reasonable amounts of land needed for mitigation. Or there may be years where there are many projects (or perhaps just one larger project) that request this mitigation method and the WCSCD must work quickly to expend the funds in a reasonable amount of time.

Results Achieved

To date the WCSCD has spent over \$1.9 million in funds on 21 projects that have resulted in 315.6 acres of new forest plantings and conservation of 572.95 acres of existing forest for a total of 888.55 acres being permanently protected by easements. These results far exceed the required nearly 480 acres required to be mitigated by the funding collected in the Forest Conservation Fund by Washington County. The nearly \$500,000 currently in the Forest Conservation Fund is due to a major contributor in 2018 and funds are projected to be expended in the Fall of 2019 and Spring of 2020.



To help ease the burden of finding willing participants for the program, the WCSCD and Department of Planning and Zoning approached the Board of County Commissioners in early 2019 to request an increase in easement payments (see chart below).

Method of Mitigation	Easement Payment Prior to May 1, 2019	Easement Payment Effective after May 1, 2019
Easements on Existing Forest	\$500 per acre	\$1500 per acre
Easements on Planting within 300 ft of an intermittent or perennial stream	\$800 per acre	\$2000 per acre
Easements on new planting beyond 300 ft of an intermittent or perennial stream	\$500 per acre	\$1800 per acre

This is the first time in the program’s history that the easement payment was increased. This has prompted some new interest in the program and should be periodically reviewed to help support interest in the program in the future.

Each calendar year the Department of Planning and Zoning assembles information associated with forest conservation mitigation in the annual report submitted to the Maryland Department of Natural Resources. Included within this report is an identification of funds collected and expended within the calendar year associated with forest conservation funds monies. It is understood that reporting will be increased in coming years to better account for mitigation and expenditures of forest conservation funds.

General Plan of Project Management

Trees and forests in general have multiple important benefits to a community and its citizens. Individual trees planted in strategic areas such as parking lots, urbanized areas or along roadways can help reduce urban heat island impacts by breaking up large areas of impervious surfaces that tend to absorb heat from the sun and increase temperatures in localized areas. Smaller patches of forested areas scattered in and around urbanized areas can have the same effect on urban heat islands but also provide areas of recreation such as small parks or playgrounds. They also create micro-habitats for small animals and inland birds. Large areas of contiguous forest provide habitat for large game animals, provide recreational opportunities, and help clean our air by sequestering carbon dioxide and emitting oxygen.

Forested areas in all shapes, sizes, and locations are beneficial, which is why there are numerous methods of mitigation developers may use to offset impacts of growth on our forest resources. In accordance with the Act, the County Forest Conservation Ordinance follows the preferred sequence of techniques and areas for mitigation where on-site mitigation of forest resources is the highest priority. Payment in lieu of afforestation or reforestation is the least preferred method of mitigation because it provides no direct remediation or mitigation in the area where development may be impacting forest resources. While this is the least favored method of

mitigation, the County recognizes that there are some cases where forest mitigation on-site may not have the same impact as mitigating somewhere else in the watershed or County.

Washington County's management of expending PIL funding has remained largely unchanged since the inception of the Forest Conservation Act. Priorities for fund expenditure have traditionally been for projects that promote water quality and sensitive area protection. As shown in the priority ranking sheets for planting and retention included in Appendix B, highest priorities are given for areas near perennial streams and trout streams as well as properties located in the Antietam Creek and Conococheague Creek watersheds. Priority is also given to existing forested areas that are in good health and help create or expand forest corridors. The priority ranking sheets were developed by WCSCD in cooperation with the Department of Natural Resources (DNR) regional and county foresters. It should be noted that while a priority ranking system exists, it cannot calculate all of the variables that may make one location more effective than another. Therefore, the County reserves the right to take other unique characteristics of a property under advisement when prioritizing the expenditure of forest conservation funds.

Water Quality

Water quality has always been an important issue with regard to land management and its impacts on the health and safety of people all over the world. Forests provide the most effective land cover for the maintenance of water quality. They act as natural sponges that absorb and slowly release rainfall into streams thereby limiting sedimentation and improving water quality. Trees can also provide needed shade along water bodies to help lower ambient temperatures and raise oxygenation levels. Many fish species such as trout and salmon require lower water temperatures to reproduce.

In Washington County there are 10 major watersheds using the Maryland 8-digit watershed definition. The Antietam and Conococheague Creek watersheds drain over 50% of the land area in the County. They are also generally the most impacted from urbanized growth. The Towns of Smithsburg, Boonsboro, Keedysville, and Sharpsburg, as well as the majority of incorporated area of the City of Hagerstown, are located within Antietam Creek watershed. A small portion of the City of Hagerstown and a portion of the County UGA are located within the Conococheague Creek watershed.

Because these two watersheds are the most impacted by growth and development, they are specifically included as high priority areas for expenditure of PIL funds. In addition to meeting the requirements of the Forest Conservation Act, these easements serve to compliment the efforts of the County Watershed Implementation Plan (WIP) which is focusing on water quality within these two watersheds. Whenever possible WCSCD seeks projects that may also compliment other water quality projects such as stream restoration. WCSCD and Washington County collaborated on the development of and obtained Environmental Protection Agency (EPA) approval for, the Antietam Creek Watershed Restoration Plan. The management of the PIL funds as described also supports the goals of that plan to mitigate sediment and bacteria pollution in the Antietam Creek and its tributaries.

Sensitive Area Protection

Environmentally sensitive areas identified by the state and county regulatory processes have a strategic connection to forested areas. Forested areas within stream buffers and floodplains strengthen nature's ability to enhance water quality and reduce erosion and sedimentation. Steep slopes also benefit from forested areas because root systems stabilize the soil to reduce erosion and soil slippage. Another benefit of forested areas is that it provides habitat for numerous species of plants and animals. Forested areas provide shade, shelter, and food to the wildlife that we depend upon.

Forest ecosystems work best when they are in large contiguous areas and have little invasive intrusion. Fragmentation of forested areas has been proven to reduce forest health and degrade habitat. It leads to increases in invasive plants, pest, and disease as well as reduction of water quality. Characteristics of a healthy interior forest include cool, shady areas that are noticeably lower than ambient temperatures outside of the forested area. They also tend to be damp even amid long periods of little to no precipitation and have sound dampening effects. Typically, these conditions are found a minimum of 200 to 300 ft. inside the forested edge.

When fragmentation of contiguous forested areas fall below the 200-300 ft. minimum threshold, these areas begin to experience 'edge effects'. Edge effects include changes in temperature, moisture, and light that have ill effects on the survivability of trees and plants as well as the animals that rely upon these resources for food and habitat.

As shown on the priority ranking sheets in Appendix B, the County ranks potential planting and/or retention areas that are part of a larger block of forested area (or those that would create new "Greenway" corridors between existing areas) of higher importance to help combat the effects of forest fragmentation.

Appendix A:

Forest Conservation Fund Implementation Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN

**BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND
AND
WASHINGTON COUNTY SOIL CONSERVATION DISTRICT
BOARD OF SUPERVISORS**

This MEMORANDUM OF UNDERSTANDING (hereinafter the "MOU") is made this 13 day of March, 2019, by and between the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (hereinafter the "County") and the **WASHINGTON COUNTY SOIL CONSERVATION DISTRICT BOARD OF SUPERVISORS** (hereinafter the "SCD").

EXPLANATORY STATEMENT

The State of Maryland's Forest Conservation Act (hereinafter the "Act"), which is set forth at Md. Code, Natural Resources Article, §§ 5-1601, *et seq.*, became effective on July 1, 1991. Counties and Municipalities in the State are required by the Act to adopt similar legislation.

The County has complied with the Act by adopting an Ordinance entitled "An Ordinance Requiring a Comprehensive Local Forest Conservation Program" (hereinafter the "Forest Conservation Ordinance") which became effective on February 1, 1993. Pursuant to the Forest Conservation Ordinance, payment of a fee in lieu of retention or planting can be made into the Washington County Forest Conservation Fund to meet the obligation to retain existing or create new forest. The use of said Forest Conservation Fund is limited to "the costs directly related to afforestation and reforestation, including but not limited to site identification, acquisition, and preparation, the acquisition of planting stock, compensation to persons engaged in the planting activity and maintenance of forest previously planted or protected with payment in lieu funds." as specified in Article 11, Section 11.1.I. of the Washington County Forest Conservation Ordinance.

The County has determined that the most efficient and effective method to use Forest Conservation funds for afforestation and reforestation is to purchase easements from willing private property owners to plant new forest cover and protect existing forest cover. The Board of County Commissioners approved a program to utilize the Forest Conservation Fund in this manner on or about August 19, 1997. The County has determined that portions of said program can be administered most effectively by the SCD because of the expertise of SCD personnel, their existing network of property owners who participate with the SCD in various programs, and their frequency of contact with new participants.

The SCD has agreed to perform such portions of the program.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties enter into this agreement and do mutually agree and understand for the

benefit of both parties and the citizens of Washington County that they agree to comply with the Forest Conservation Act and the Forest Conservation Ordinance and that in furtherance of the program, the parties agree as follows:

1. The County's duties and responsibilities are as follows:
 - a. The County shall collect the payment in lieu of fees as applicable under the Forest Conservation Ordinance and shall be responsible for all accounting and disbursing of the fee.
 - b. The County shall have sole approval authority for all expenditures from the Forest Conservation Fund.
 - c. The County shall disburse funds to the SCD, upon the submission of a full and complete request for payment on forms approved by the County at a rate of \$900.00 per acre for each acre put under a forest conservation/afforestation/reforestation easement in favor of the County, as SCD's fee for conducting SCD's portions of the program.
 - d. Upon notice from SCD personnel that services have been rendered according to terms approved by the County, the County shall disburse funds to participating property owners, surveyors, and other participating vendors of services necessary to conduct the program.
 - e. The County shall provide any legal documents necessary to secure easements on the individual properties.
 - f. The County shall approve all sites for new planting or easements on existing forests.
 - g. The County shall approve Forest Conservation Plans for all new planting or easements on existing forests.
2. SCD's duties and responsibilities are as follows:
 - a. SCD shall contact property owners and explain the benefits and restrictions of accepting a perpetual easement to allow planting of new forest or retention of existing forest including providing a copy of the form easement document provided by the County to SCD.
 - b. SCD shall evaluate individual properties to determine their suitability for planting or retention and will recommend properties for inclusion in the program to the County.
 - c. SCD shall secure signed Notices of Intent from property owners prior to initiating surveys or requesting disbursement of funds.
 - d. SCD shall order land surveys of the proposed easement areas from a surveyor selected by the Board of Supervisors of the SCD to produce a plat and legal description of the easement area, including a separately described and shown access easement if needed. SCD shall

coordinate directly with said surveyors to provide information needed and to ensure that the plat and description(s) are prepared in a timely manner.

e. SCD shall prepare--or arrange for third parties approved in advance by the County to prepare--planting plans for individual sites according to standards contained in the Forest Conservation Manual.

f. SCD may, where conditions warrant, conduct advance site preparation and planting with SCD personnel or arrange for volunteers to conduct same.

g. SCD shall select tree planting vendors or other needed vendors in accordance with procedures approved by the Board of Supervisors of the SCD.

h. SCD shall meet with the selected vendor and conduct site inspections before, during and after installation, as necessary, to insure installation according to the approved Forest Conservation Plan.

i. SCD shall conduct site inspections after installation is complete on an agreed upon schedule to insure survival and continued maintenance of the planting or retention site.

j. SCD shall provide notice as needed to Washington County to insure proper and timely payment or non-payment of vendors as appropriate.

k. SCD shall contract for title searches and any subordination agreements, if required, for each project with an attorney selected by the Board of Supervisors of the SCD.

l. SCD shall select tree planting vendors or other needed contractors in accordance with procedures approved by the Board of Supervisors of the SCD.

m. SCD shall provide contracts with selected vendors.

n. SCD shall coordinate the preparation of Forest Stand Delineations and Forest Conservation Plans by personnel from the Maryland Department of Natural Resources, Forestry Service for each selected site.

o. SCD shall coordinate a closing process for disbursement of easement payments and execution of easement documents with an attorney selected by the Board of Supervisors of the SCD.

3. The County and SCD agree to continue to work cooperatively to develop additional criteria when needed and refine existing standards and procedures for the most effective and efficient expenditures from the Forest Conservation Fund.

4. It is agreed that this MOU shall be governed by, construed, and enforced in accordance with the laws of the State of Maryland.

5. This MOU contains the entire agreement by and between the parties hereto and cannot be changed, altered, modified, or amended except in writing.

6. This MOU shall be effective for a period of twenty (20) years, unless terminated sooner pursuant to paragraph seven herein.

7. This MOU may be terminated by either party, without penalty, on giving a written notice of the intent to terminate to the other party thirty (30) days prior to the date of the intended termination, by sending the required notice to the party to be notified, postage prepaid, at the address specified below for that party (or to such other address as may be designated in the future by that party), or by personal delivery to that party:

If to County: Jeffrey A. Cline, President (or his successor)
Board of County Commissioners of
Washington County, Maryland
100 W. Washington Street, Ste. 1101
Hagerstown, MD 21740

With copy to: Washington County Attorney's Office
100 W. Washington Street, Ste. 1101
Hagerstown, MD 21740

If to SCD: Washington County Soil Conservation District
Board of Supervisors
1260 Maryland Avenue
Hagerstown, MD 21740

8. The waiver by County or SCD of any breach of any term contained in this MOU shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term.

9. It is understood and agreed that nothing herein contained is intended or should be construed as in anywise creating or establishing the relationship of co-partners between the parties hereto, or as constituting SCD as the agent, representative or employee of the County for any purpose or in any manner whatsoever. SCD is to be and shall remain an independent contractor with respect to all services performed under this MOU.

10. Neither County nor SCD may assign or transfer this MOU or any rights or benefits under this MOU to any person or entity without the prior written approval of the other party.

11. County and SCD shall be excused for the period of any delay in the performance of any obligations under this MOU when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire, or other casualty or acts of God.

12. The covenants contained in or liabilities accrued under this MOU which, by their terms, require their performance after the expiration or termination of this MOU shall be enforceable notwithstanding the expiration or other termination of this MOU.

13. If any provision of this MOU shall be determined to be invalid or unenforceable, the remaining provisions of this MOU shall not be affected thereby, and every provision of this MOU shall remain in full force and effect and enforceable to the fullest extent permitted by law.

14. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. This MOU constitutes the entire agreement between the parties. There are no promises or other agreements, oral or written, express or implied, between the parties other than as set forth in this MOU. No change or modification of, or waiver under, this MOU shall be valid unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding by their duly authorized signatories, and jointly and severally intend to be legally bound by its terms.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND



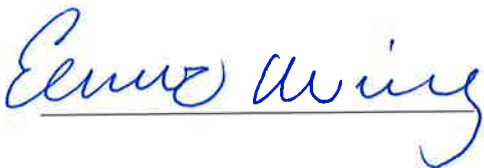
Krista L. Hart, Clerk

BY:  (SEAL)

Jeffrey A. Cline, President

ATTEST/WITNESS:

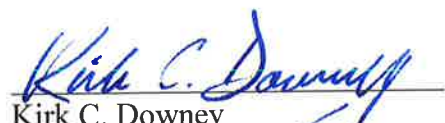
WASHINGTON COUNTY SOIL CONSERVATION
DISTRICT BOARD OF SUPERVISORS



BY:  (SEAL)

Harry E. Strite, Chair

Approved as to legal sufficiency
for execution by the County:



Kirk C. Downey
County Attorney

Appendix B:

Forest Conservation Fund Implementation Priority Ranking Sheets

**WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE
PAYMENT IN LIEU PROGRAM
PLANTING PROJECT RANKING CRITERIA**

PROJECT NAME

Ranking Factor		Description	Maximum Total Points	Score	Notes
1	Adjacent to perennial or intermittent stream	Perennial stream (10 pts.), Intermittent (5 pts.), No stream (0 pts.)	10		
2	Connects forest "Islands" creating forested corridors	Forested corridor is at least 300' wide (5 pts.), 200' wide (3 pts.), does not create corridor (0 pts.)	5		
3	Adjacent to critical habitat	Adjacent to Class III Trout Waters with natural populations of trout (10 pts.), within Class III watershed (5 pts), wetlands (3 pts.), No critical habitats (0 pts.)	10		
4	Contiguous forest cover	Planting will increase forest to 100 acre block (5pts.), 50 acres(3 pts.), will not adjoin existing forest (0 pts.)	5		
5	100 year floodplain	Planting will cover 100% of 100 year unforested floodplain (5 pts.), 50% (3 pts.), 0% (0 pts.)	5		
6	Site access	Easily accessible for planting, maintenance and long term monitoring, (10 pts)	10		
7	Site preparation, including control of invasive plant species	Site is free of invasives and requires standard site preparation (10 pts.), site requires minimal control of invasives and standard site preparation (5 pts.), requires extensive invasives control and extensive site preparation (0 pts.)	10		
8	Total afforestation area	> 5 acres (10 pts.), 2-5 acres (5 pts.), < 2 acres (1 pt.)	10		
9	Watershed location	Located in Antietam or Conococheague watershed (10 pts.)	10		
10	Sensitive species Identified	Sensitive species area Identified for site and no adverse effects from project (5pts.), no sensitive species area Identified for site, (0pts.)	5		
TOTAL POINTS POSSIBLE			80	0	

**WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE
PAYMENT IN LIEU PROGRAM
EXISTING FOREST PROJECT RANKING CRITERIA**

PROJECT NAME

**TO BE CONSIDERED FOR PROGRAM INCLUSION, THE EXISTING FOREST MUST MEET THE DEFINITION OF "FOREST" CONTAINED IN THE
WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE**

Ranking Factor		Description	Maximum Total Points	Score	Notes
1	Adjacent to perennial or intermittent stream	Perennial stream (10 pts.), Intermittent (5 pts.), No stream (0 pts.)	10		
2	Connects forest "Islands" creating forested corridors	Forested corridor is at least 300' wide (10 pts.), 200' wide (5 pts.), does not create corridor (0 pts.)	10		
3	Adjacent to critical habitat	Adjacent to Class III Trout Waters with natural populations of trout (10 pts.), within Class III watershed (5 pts), wetlands (3 pts.), No critical habitats (0 pts.)	10		
4	Contiguous forest cover	Planting will increase forest to 100 acre block (5pts.), 50 acres(3 pts.), will not adjoin existing forest (0 pts.)	5		
5	100 year floodplain	Planting will cover 100% of 100 year unforested floodplain (5 pts.), 50% (3 pts.), 0% (0 pts.)	5		
6	Site access	Easily accessible , maintenance and long term monitoring, (10 pts)	10		
7	Site conditions, including control of non-native/invasive plant species	Adequately stocked forest of predominately native tree and shrub species of good health and vigor(10 pts.,) over or under stocked forest with no greater than 20% non-native/invasive species and landowner has demonstrated commitment to control (5 pts.), requires extensive invasive control (0 pts.)	10		
8	Total existing forest area	> 5 acres (10 pts.), 2-5 acres (5 pts.), < 2 acres (1 pt.)	10		
	Watershed location	Located in Antietam or Conococheague watershed (10 pts.)	10		
9	Sensitive species Identified	Sensitive species area Identified for site and no adverse effects from project (5pts.), no sensitive species area Identified for site, (0pts.)	10		
TOTAL POINTS POSSIBLE			90	0	