

Article III

Application

§31–3.1 Relevance

Except as provided in §31-3.2 of this article, this Ordinance applies to:

- A. A person making application for a subdivision, project plan, grading, or sediment and erosion control approval on units of land 40,000 square feet or greater after the effective date of this Ordinance;
- B. A public utility not exempt under §31-3.2 E and F of this article;
- C. A unit of county or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment and erosion control approval on areas 40,000 square feet or greater.

§31–3.2 Exemptions

This Ordinance does not apply to:

- A. Highway construction activities under Natural Resources Article, §5-103, Annotated Code of Maryland;
- B. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, §§8-1801—8-1817, Annotated Code of Maryland, including those areas into which Critical Area forest protection measures have been extended under Natural Resources Article, §5-1602(c), Annotated Code of Maryland;
- C. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, §8-211, Annotated Code of Maryland, that are completed:
 - (1) Before July 1, 1991; or
 - (2) After July 1, 1991, on property which:
 - (a) Has not been the subject of application for a grading permit for development within 5 years after the logging or harvesting operation, and
 - (b) Is the subject of a declaration of intent as provided for in §3.3 of this article, approved by the Department;
- D. 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, except that a person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a 1-year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in §31-3.3 of this article which includes:
 - (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
 - (2) A sketch map of the property which shows the area to be cleared;

E. The cutting or clearing of public utility rights-of-way licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland, or land for electric generating stations licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland, if:

(1) Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and

(2) Cutting or clearing of the forest is conducted to minimize the loss of forest;

F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under Public Utility Companies, §§7-207 and 7-208 or 7-205, Annotated Code of Maryland;

G. Except for a public utility subject to §31-3.2F of this article, routine maintenance or emergency repairs of a public utility right-of-way if:

(1) The right-of-way existed before the effective date of this Ordinance; or

(2) The right-of-way's initial construction was approved under this Ordinance;

H. A residential construction activity conducted on an existing single lot of any size of record at the time of application, or a linear project not otherwise exempted under this Ordinance, if the activity:

(1) Does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest;

(2) 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 Ordinance; and

(3) Is the subject of a declaration of intent filed with the Department, as provided for in §31-3.3 of this article, stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest.

I. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland;

J. Non-coal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland;

K. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child of the owner, if the activity:

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

(2) Is the subject of a declaration of intent filed with the Department, as provided for in §31-3.3 of this article, which states that transfer of ownership may result in a loss of exemption;

L. A preliminary plan of subdivision or a grading or sediment and erosion control plan approved before July 1, 1991;

M. A planned unit development that, by December 31, 1991, has:

- (1) Met all requirements for planned unit development approval; and
 - (2) Obtained initial development plan approval by the Department;
- N. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:
- (1) The transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and
 - (2) Both the grantor and grantee file a declaration of intent as provided for in §31-3.3 of this article;
- O. An activity on a previously developed area covered by impervious surface and located in the priority funding area;
- P. Maintenance or retrofitting of a storm water management structure that may include clearing of vegetation or removal and trimming of trees, if the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure; or
- Q. A stream restoration project, as defined in Article II §31-2.57 of this Ordinance, for which the applicant for a grading or sediment and erosion control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner or owners.
- R. The cutting or clearing of trees at the airport property to comply with the requirements of 14 CFR S 77.25 relating to objects affecting navigable airspace, provided that the Federal Aviation Administration has determined that the trees are a hazard to aviation.

§31–3.3 Declaration of Intent.

- A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, §§5-103 and 5-1601—5-1612, Annotated Code of Maryland, and this Ordinance.
- B. A person seeking an exemption under §31-3.2C, D, H, K and N of this article shall file a declaration of intent with the Department.
- C. The declaration of intent is effective for 5 years.
- D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:
 - (1) Does not conflict with the purpose of any existing declaration of intent; and
 - (2) Complies with the applicable requirements for an exempted activity.
- E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:
 - (1) There shall be an immediate loss of exemption; or

(2) There may be a noncompliance action taken by the Department, as appropriate, under this Ordinance.

F. An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Ordinance are satisfied.

G. The Department may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:

(1) Meet the retention, afforestation, and reforestation requirements established in Articles III—XIII of this Ordinance;

(2) Pay a noncompliance fee of 30 cents (\$.30) per square foot of forest cut or cleared under the declaration of intent;

(3) Be subject to other enforcement actions appropriate under Natural Resources Article, §§5-1601—5-1612, Annotated Code of Maryland, and this Ordinance; or

(4) File a declaration of intent with the Department.

H. In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Ordinance.

I. Commercial Logging and Timber Harvesting - The requirements for a declaration of intent may be satisfied by a forest management plan for the entire tract, prepared by a forester, licensed in Maryland, according to Business Occupations and Professions Article, Title 7, Annotated Code of Maryland, which outlines management practices needed to meet the stated objectives for a minimum of 5 years.

J. Agricultural Activities or Commercial Logging and Timber Harvesting - A declaration of intent may be part of an amended sediment and erosion control plan which ensures that the activity meets the conditions for an exemption as stated in Article III, §31-3.2 C and D of this Ordinance.