

# COUNCIL OF THE TOWN OF INDIAN HEAD

## Ordinance No. 05-02-12

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**Introduced By:** Mayor and Council  
**Date Introduced:** June 4, 2012  
**Date Adopted:** July 2, 2012  
**Date Effective:** July 22, 2012

**AN ORDINANCE** concerning

### **Forest Conservation**

**FOR** the purpose of prohibiting certain development projects from cutting or clearing certain forests within the Town of Indian Head, Maryland unless a forest stand delineation and a forest conservation plan are in effect.

\* \* \* \* \*

**WHEREAS,** the General Assembly of Maryland has adopted the **FOREST CONSERVATION ACT OF 1991**; and

**WHEREAS,** this act requires all political subdivisions to adopt a local forest conservation plan.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF INDIAN HEAD, MARYLAND, THAT:

#### **Section I Purpose and General Provisions**

##### 1.1 Purpose.

The Town Council has determined that to meet the requirements of Natural Resources Article, §§5-1601-5-1612, Annotated Code of Maryland, the provisions of this Ordinance must be enacted.

#### **Section II Forest and Tree Conservation Definitions**

In this ordinance the following terms have the meanings indicated.

##### 2.1 "Afforestation" means:

A. Establishment of a forest on an area from which forest cover has been absent for a long period of time;

B. Planting of open areas which are not presently in forest cover

2.2 "Applicant" means a person who is applying for subdivision or project plan approval or a grading or sediment control permit, or who has received approval of a forest stand delineation or forest conservation plan.

##### 2.3 "Approved forest management plan" means a document:

A. Approved by the Department of Natural Resources forester assigned to Charles County; and

B. Which operates as a protective agreement for forest conservation as described in the Natural Resources Article, §5-1607e - (f), Annotated Code of Maryland.

2.4 "Caliper" means the diameter measured at 2 inches above the root collar.

2.5 "Champion tree" means the largest tree of its species within the United States, the State, county, or municipality;

2.6 "Commercial and industrial uses" means manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding, and parking areas, and corresponds to Town of Indian Head zoning Classification(s) GC, TCMX.

2.7 "Commercial logging or timber harvesting operations" means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

2.8 "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area.

A critical habitat area shall:

- A. Be likely to contribute to the long-term survival of the species;
- B. Be likely to be occupied by the species for the foreseeable future; and
- C. Constitute habitat of the species which is considered critical under Natural Resources Article, §§4-2A-04 and 10-2A-06, Annotated Code of Maryland.

2.9 "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, §§4-2A-04 and 10-2A-04, Annotated Code of Maryland.

2.10 "Declaration of intent" means:

A. A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property:

- (1) Is for certain activities exempted under this ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland,
- (2) Does not circumvent the requirements of this ordinance or Natural Resources Article, §§5-103 and 5-1601-5-1612, Annotated Code of Maryland, and
- (3) Does not conflict with the purposes of any other declaration of intent; and

B. The document required under COMAR 08.19.01.05 or this ordinance.

2.11 "Department" means the Department charged with implementing the local forest conservation program.

2.12 Development Project.

A. "Development project" means the grading or construction activities occurring on a specific tract that is 40,000 square feet or greater.

B. "Development project" includes redevelopment.

2.13 "Development project completion" means for the purposes of afforestation, reforestation, or payment into a fund:

- A. The release of the development bond, if required;
- B. Acceptance of the project's streets, utilities, and public services by the Town; or
- C. Designation by the Town or State that a:
  - (1) Development project has been completed, or

(2) Particular stage of the staged development project, including a planned unit development, has been completed.

2.14 Forest.

A. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.

B. "Forest" includes:

(1) Areas that have at least 100 live trees per acre with at least 50 percent of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger; and

(2) Areas that have been cut but not cleared.

C. "Forest" does not include orchards.

2.15 "Forest Conservancy District Board" means the forestry board created for each State forestry conservancy district under Natural Resources Article, §§5-601-5-610, Annotated Code of Maryland.

2.16 "Forest conservation" means the retention of existing forest or the creation of new forest at the levels set by the State or Town.

2.17 "Forest Conservation and Management Agreement" means an agreement as stated in the Tax-Property Article, §8-211, Annotated Code of Maryland.

2.18 "Forest Conservation Technical Manual" means the technical manual incorporated by reference, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

2.19 "Forest conservation plan" means a plan approved pursuant to Natural Resources Article, §§5-1606 and 5-1607 Annotated Code of Maryland.

2.20 "Forest cover" means the area of a site meeting the definition of forest.

2.21 "Forest management plan" means a plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

2.21.1 "Forest mitigation bank" means an area of land which has been intentionally afforested or reforested for the express purpose of providing credits for reforestation requirements.

2.21.2 "Forest mitigation bank agreement" means an agreement entered into by an individual owning a forest mitigation bank and the Department or local government which commits the banker to certain procedures and requirements when creating and operating the forest mitigation bank.

2.22 "Forest mitigation bank plan" means a plan submitted for approval of forest mitigation bank to the Department, or a local government with an approved local program, by an individual proposing to establish a forest mitigation bank.

2.23 "Forest stand delineation" means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the State of Maryland Forest Conservation Technical Manual.

2.24 "Growing season" means the period of consecutive frost-free days as stated in the current soil survey for this county published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)—(f).

2.25 "Residential areas" means areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated

infrastructure, such as roads, utilities, and water and sewer service, and corresponds to the Town of Indian head Zoning Classification(s) of R-1, R-2, RM, TCMX.

2.26 "Intermittent stream" means a stream in which surface water is absent during a part of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

2.27 "Landscaping plan" means a plan:

- A. Drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater in size;
- B. Using native or indigenous plants when appropriate; and
- C. Which is made part of an approved forest conservation plan.

2.28 "Linear project" means a project which:

- A. Is elongated with nearly parallel sides;
- B. Is used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles; and
- C. May traverse fee simple properties through defined boundaries, or established easement rights.

2.29 "Local agency" means each unit in the executive, legislative or judicial branch of a county or municipal government, including an office or department of public works.

2.30 "Lot" means a unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision as defined by Natural Resources Article §5-1601, Annotated Code of Maryland and this ordinance without an approved forest stand delineation and forest conservation plan.

2.31 "Maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, §5-1605, Annotated Code of Maryland and this ordinance.

2.32 "Minor development project" means a project:

- A. On less than 5 acres of land containing not more than four lots per acre; or
- B. Substantively similar as defined by the Town and approved by the State.

2.33 "Mixed use development" means a single, relatively high density development project, usually commercial in nature, which includes two or more types of uses, and corresponds to the Town of Indian Head Zoning Classification(s).

2.34 "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

2.35 "Net tract area" means:

- A. Except in agriculture and resource areas the total area of a site, including both forested and nonforested areas to the nearest 1/10 acre, reduced by that area where forest clearing is restricted by another local ordinance or program;
- B. In agriculture and resource areas, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by that area where forest clearing is restricted; by another local ordinance or program; and
- C. For a linear project:

- (1) The area of right-of-way width, new access roads, and storage; or
- (2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

## 2.36 Nontidal Wetlands

A. "Nontidal wetlands" means an area that is:

- (1) Inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation soil conditions, commonly known as hydrophytic vegetation; and
- (2) Considered a nontidal wetland in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

B. "Nontidal wetlands" does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland.

2.37 "Offsite" means outside of the limits of the area encompassed by the tract.

2.38 "Onsite" means within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain.

2.39 "100-year flood" means a flood which has a 1 percent chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

2.40 "100-year floodplain" means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

2.41 "Perennial stream" means a stream containing surface water throughout an average rainfall year, as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

2.42 "Person" means the federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

2.43 "Project plan" means a construction, grading, or sediment control activity on an area of 40,000 square feet or greater by a local agency.

2.44 "Public utility" means any:

- A. Transmission line or electric generating station; or
- B. Water, sewer, electric, gas, telephone, and television cable service line.

2.45 "Reforestation"

A. "Reforestation" or "reforested" means the:

- (1) Creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years; or

(2) Establishment of a forest according to procedures set forth in the Forest Conservation Technical Manual.

B. "Reforestation" or "reforested" includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2500 square feet or more of area.

C. "Reforestation" or "reforested" for a linear project involving overhead transmission lines may consist of a biological community dominated by trees and woody shrubs with no minimum height or diameter criteria.

2.46 "Regulated activity" means any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

- A. Subdivision;
- B. Grading;
- C. An activity that requires a sediment control permit; or
- D. Project plan of a local agency.

2.47. "Retention" means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the Department of natural Resources Forest Conservation Technical Manual.

2.48 "Sediment control permit" means the authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland.

2.49 "Seedlings" means an unbranched woody plant, less than 24 inches in height and having a diameter of less than ½ inch measured at 2 inches above the root collar.

2.50 "Selective Clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

2.51 "Stream buffer" means all lands lying within 50 feet, measured from the top of each normal bank of a perennial or intermittent stream.

2.52 "Subdivision" means any division of a unit of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

2.53 Timber Harvesting.

A. "Timber harvesting" means a tree cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor.

B. "Timber harvesting" does not include grubbing and clearing of root mass.

2.54 "Town" shall be defined as the Town of Indian Head, Maryland.

2.55 "Tract" means property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to this subtitle.

2.56 "Tree" means a large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

2.57 Variance.

A. "Variance" means relief from Natural Resources Article, §§5-1601-5-1612, Annotated Code of Maryland or this ordinance.

B. "Variance" does not mean a zoning variance.

2.58 "Watershed" means all land lying within an area described as a subbasin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08.

2.59 "Whip" means an unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar.

### Section III Application

3.1 Except as provided in Section 3.2 of this section, this ordinance applies to:

A. A person making application for a subdivision, project plan, grading, or sediment 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 Section 3.2 E and F of this section.

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 control approval on areas 40,000 square feet or greater.

3.2 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.

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 declaration of intent as provided for in Section 3.3 of this section, approved by the Town.

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 Section 3.3 of this section which includes:

(1) A statement that the landowner or landowner's agent will practice agriculture on the 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 certificate 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 Section 3.2 (F) of this section, 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 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 Town, as provided for in Section 3.3 of this section, 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. Noncoal 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 Town, as provided for in Section 3.3 of this section which states that transfer of ownership may result in a loss of exemption.

L. A preliminary plan of subdivision or a grading or sediment 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 Town.

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 Section 3.3 of this section.

### 3.3 Declaration of Intent.

A. The purpose of this 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 Section 3.2 C, D, H, K and N of this section shall file a declaration of intent with the Town.

C. The existence of a declaration of intent does not preclude:

(1) An exempted activity on the property subject to a declaration of intent, if the activity:

(a) Does not conflict with the purpose of any existing declaration of intent, and

(b) Complies with the applicable requirements for an exempted activity;

(2) A regulated activity on the area covered by the declaration of intent, if the activity occurs within 5 years of the effective date of the declaration of intent, in which case:

(a) There shall be an immediate loss of exemption, or

(b) There may be a noncompliance action taken by the Town, as appropriate, under this ordinance; or

(3) A regulated activity on that area of the property not covered under the declaration of intent if the requirements of this ordinance are satisfied.

D. The Town 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 Section III – XIII of this ordinance;

(2) Pay a noncompliance fee of \$1.00 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 Town.

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

F. The declaration of intent is effective for 5 years.

## Section IV General Requirements

4.1 A person making application after the effective date of this ordinance, for subdivision or local agency project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater shall:

- A. Submit to the Town a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and
- B. Use methods approved by the Town, as provided in the Department of Natural Resources Forest Conservation Technical Manual, to protect retained forests and trees during construction.

4.2 If a local agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D-G apply.

## Section V Forest Stand Delineation

5.1 Criteria.

A. A forest stand delineation shall be submitted at the initial stages of subdivision or project plan approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.

B. The delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08-19-06-01A.

C. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:

- (1) A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;
- (2) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15 percent or more;
- (3) Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;
- (4) Location of 100-year floodplains;
- (5) Information required by the Department of Natural Resources Forest Conservation Technical Manual; and
- (6) Other information the Town determines is necessary to implement this ordinance.

D. If approved by the Town, a simplified delineation may be submitted for an area:

- (1) When no forest cover is disturbed during a construction activity; and
- (2) Designated to be under a long term protective agreement.
- (3) Other information the Town determines is necessary to implement this ordinance.

E. The Town shall consider a simplified forest stand delineation complete if it includes:

- (1) All requirements under Section 5.1C(1) and (2) and (4) and (5) of this section;

(2) A map showing existing forest cover as verified by field inspection;  
and

(3) Other information required by this ordinance.

F. An approved forest stand delineation may remain in effect for a period not longer than 5 years.

G. Time for Submittal.

(1) Within 45 calendar days after receipt of the forest stand delineation, the Town shall notify the applicant whether the forest stand delineation is complete and correct.

(2) If the Town fails to notify the applicant within 45 days, the delineation shall be treated as complete and correct.

(3) The Town may require further information or provide for an additional 30 calendar days under extenuating circumstances.

## **Section VI Forest Conservation Plan**

### **6.1 General Provisions.**

A. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.

B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Town:

(1) How techniques for forest retention have been exhausted;

(2) Why the priority forests and priority areas specified in Natural Resources Section, §5-1604(c)(1), Annotated Code of Maryland, cannot be left in an undisturbed condition;

(a) If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be following in compliance with Natural Resources Section §5-1607, Annotated Code of Maryland; and

(b) Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article §5-1607, Annotated Code of Maryland.

(3) How the disturbance to the priority forests and priority areas specified in Natural Resources Article, §5-1607(c)(2), Annotated Code of Maryland, qualifies for a variance.

C. The applicant shall demonstrate to the satisfaction of the Town that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.

D. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory requirements and the requirements of this law, subject to the following:

(1) Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted towards forest conservation requirements under this law;

(2) For the purpose of calculating reforestation mitigation under this ordinance, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

(3) Nontidal wetlands shall be considered to be priority areas for retention and replacement.

(4) Forested nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the nontidal wetlands and to avoid delay in the approval process.

## **6.2 Preliminary Forest Conservation Plan**

A. A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06-01A.

B. A preliminary forest conservation plan shall:

(1) Be submitted with the preliminary plan of subdivision or proposed project plan;

(2) Include the approved forest stand delineation for the site;

(3) Include a table that lists the proposed values of the following, in square feet:

(a) Net tract area,

(b) Area of forest conservation required, and

(c) Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;

(4) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;

(5) Include an explanation of how the provisions of Section 6.1 of this ordinance have been met;

(6) In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;

(7) Include a proposed construction timetable showing the sequence of forest conservation procedures;

(8) Show the proposed limits of disturbance;

(9) Show proposed stockpile areas;

(10) Incorporate a proposed 3-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;

(11) Information required in the Department of Natural Resources Forest Conservation Technical Manual; and

(12) Other information the Town determines is necessary to implement this ordinance.

C. The review of the preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.

D. During the different stages of the review process, the preliminary forest conservation plan may be modified. Provided the Town approves the changes.

### **6.3 The Final Forest Conservation Plan**

A. A final forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

B. A final forest conservation plan shall:

(1) Be submitted with the following:

- (a) A final subdivision plan,
- (b) A final project plan,
- (c) An application for a grading permit, or
- (d) An application for a sediment control permit;

(2) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;

(3) In the case of afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;

(4) Incorporate a binding 3-year maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:

- (a) Watering, and
- (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the Department of Natural Resources Forest Conservation Technical Manual;

(5) Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:

- (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and
- (b) Limits uses in areas of forest designated and consistent with forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;

(6) Include the substantive elements required under Section 6.2B(2)-(5), (7)-(9) and (11) of this article, as finalized elements of the forest conservation plan; and

(7) Other information the Town determines is necessary to implement this ordinance.

C. Time for submittal.

(1) Within 45 calendar days after receipt of the final forest conservation plan, the Town shall notify the applicant whether the forest conservation plan is complete and approved.

(2) If the Town fails to notify the plan shall be treated as complete and approved.

(3) The Town may require further information or extend the deadline for an additional 30 calendar days under extenuating circumstances.

(4) At the request of the applicant, the Town may extend the deadline under extenuating circumstances.

D. The Town's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application with the project.

E. The Town may revoke an approved forest conservation plan if it finds that:

(1) A provision of the plan has been violated;

(2) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact;  
or

(3) Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.

F. The Town may issue a stop work order against a person who violates a provision of this ordinance or a regulation, order, approved forest conservation plan, or maintenance agreement.

G. Before revoking approval of a forest conservation plan, the Town shall notify the violator in writing and provide an opportunity for a hearing.

## **Section VII Afforestation and Retention**

7.1 Afforestation Requirement. A person making application after the effective date of this ordinance for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater, shall:

A. Conduct afforestation on the lot or parcel in accordance with the following:

(1) A tract having less than 20 percent of the net tract area in forest cover shall be afforested up to at least 20 percent of the net tract area for the following land use categories:

(a) Residential areas with zoning R-1, R-2

(2) A tract with less than 15 percent of its net tract area in forest cover shall be afforested up to at least 15 percent of the net tract area for the following land use categories:

(a) Commercial and mixed use areas;

(b) High density residential in zoning designated RM and TCMX.

B. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Section 7.1(A)(1) and (2) of this ordinance:

(1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and

(2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 ration and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

7.2 Retention. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Town, that reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

A. Tree, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, nontidal wetlands, and critical habitats;

B. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

C. 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—1544 and in 50 CFR Part 17,

(2) The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01—10-2A-09, Annotated Code of Maryland, and

(3) COMAR 08.03.08;

D. Trees that:

(1) Are part of a historic site,

(2) Are associated with historic structure, or

(3) Have been designated by the state or the Town as a national, State, or county champion tree; and

E. Any tree having a diameter measured at 4.5 feet above the ground of:

(1) 30 inches or more; or

(2) 75 percent or more of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of the species as designated by the Department of Natural Resources.

## Section VIII Reforestation

### 8.1 Forest Conservation Threshold.

A. There is a forest conservation threshold established for all land use categories, as provided in subsection B of this section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of  $\frac{1}{4}$  acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

B. After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan shall provide for reforestation, or payment into the forest conservation fund, according to the formula set forth in Subsections B and C of this section and consistent with Section 6.1 of this section, and the following forest conservation thresholds for the applicable land use category:

Category of Use	Threshold Percentage
(1) Residential areas	20 percent;
(2) Commercial and mixed use areas	15 percent.

C. Calculations

- (1) For all existing forest cover measured to the nearest 1/10<sup>th</sup> acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of ¼ acre planted for each acre removed.
- (2) Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Department of Natural Resources Forest Conservation Technical Manual.
- (3) For all existing forest cover measure to the nearest 1/10<sup>th</sup> acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold and at a ratio of ¼ acre planted for each acre removed above the threshold.

**Section IX Priorities and Time Requirements for Afforestation and Reforestation**

9.1 Sequence for Afforestation and Reforestation.

A. After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Town is as follows:

- (1) Forest creation in accordance with a forest conservation plan using one or more of the following:

- (a) Transplanted or nursery stock,
- (b) Whip and seedling stock, or
- (c) Natural regeneration where it can be adequately shown to meet the objective of the State Forest Conservation Technical Manual;

- (2) In the Town of Indian Head with a tree management plan and an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Town of Indian Head, the use of:

- (a) Street trees as permissible step in the priority sequence for afforestation or reforestation and with a mature canopy coverage may be granted full credit as a mitigation technique, and
- (b) Acquisition of an offsite protection easement on existing forested areas not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed 50 percent of the area of forest cover protected;

- (3) When all other options, both onsite and offsite, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.

B. A sequence other than the one described in Subsection A of this article may be used for a specific project, if necessary, to achieve the objectives of the Town's land use plan or Town's land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.

C. The following are considered a priority for afforestation and reforestation:

- (1) Those techniques that enhance existing forest and involve selective clearing or supplemental planting onsite;
- (2) Onsite afforestation or reforestation where the retention options have been exhausted, using methods selected in accordance with Subsection F of this section, and the location being selected in accordance with this subsection;
- (3) Offsite afforestation or reforestation in the same watershed or in accordance with an approved master plan where the applicant has demonstrated that no reasonable alternative onsite exists, or where:
  - (a) Any onsite priority areas for afforestation or reforestation have been planted in accordance with this subsection; and
  - (b) The applicant has justified to the Town of Indian Head's satisfaction that environmental benefits associated with offsite afforestation or reforestation exceed those derived from onsite planting.

D. In the cases cited in Subsection C of this section, the method shall be selected in accordance with Subsection F of this section and the location shall be selected in accordance with Subsection C of this section.

E. Offsite afforestation or reforestation may include the use of forest mitigation banks which have been so designated in advance by the Town of Indian Head.

F. Standards for meeting afforestation or reforestation requirements shall be established using one or more of the following methods:

- (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams, and coastal bays and their buffers, to widths of at least 50 feet;
- (2) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and, where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
- (3) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
- (4) Establish or enhance forested areas in the 100-year floodplains;
- (5) Establish plantings to stabilize slopes of 25 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
- (6) Establish buffers adjacent to areas of differing land use with appropriate, or adjacent to highways or utility rights-of-way;
- (7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
- (8) Use native plant materials for afforestation or reforestation when appropriate.

G. A person required to conduct afforestation or reforestation under this article shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following development project completion.

## **Section X Payment Instead of Afforestation and Reforestation**

### **10.1 Forest Conservation Fund.**

- A. There is established a forest conservation fund in the local program.
- B. If a person subject to this ordinance demonstrates to the satisfaction of the Town that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money, at a rate of 10 cents per square foot of the area of required planting, reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money into the Town's forest conservation fund:
- (1) For a project inside a priority funding area, as defined in Natural Resources Article, §5-1610, Annotated Code of Maryland at a rate of 30 cents per square foot of the area of required planting until September 30, 2014, when the amount shall be adjusted for inflation as determined by the Town annually by regulation; and
  - (2) For a project outside a priority funding area, at a rate of 36 cents per square foot of the area of required planting until September 30, 2014, when the amount shall be 20 percent higher than the rate established for a project inside a priority funding area.
- C. Money contributed instead of afforestation or reforestation under this article shall be paid within 90 calendar days after development project completion.
- D. The Town shall accomplish the reforestation or afforestation for which the money is deposited within 2 years or 3 growing seasons, whichever is a greater time period, after receipt of the money.
- E. Money deposited in the local forest conservation fund:
- (1) May be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, preparation, maintenance of existing forests, and achieving urban canopy goals;
  - (2) Shall be deposited in a separate forest conservation fund; and
  - (3) May not revert to the general fund.
- F. Sites for afforestation or reforesting using fund money.
- (1) Except as provided in Subsection G(2) of this section, the reforestation or afforestation requirement under this article shall occur in the Town of Indian Head and watershed in which the project is located.
  - (2) If the reforestation or afforestation cannot be reasonably accomplished in the Town of Indian head and watershed in which the project is located, then the reforestation or afforestation shall occur in the county or watershed in the state in which the project is located.
- G. If there is no local forest conservation fund established, a person may contribute to the State fund. The Department of Natural Resources shall determine when contribution is allowable under COMAR 08.19.02.021.

## **Article X-1 Payment by Credits From a Forest Mitigation Bank**

### **10.1.1 Use of Forest Mitigation Bank**

- A. If a person subject to this Ordinance demonstrates to the satisfaction of the Town of Indian Head that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person may contribute credits from a forest mitigation bank. A credit is required for each tenth of an acre of an area or required planting.

B. The credits shall be debited from an approved forest mitigation bank within 90 calendar days after development project completion.

## Article X-2 Establishing Forest Mitigation Banks

### 10.1.2 Forest Mitigation Banks

A. A person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this Ordinance.

B. The forest mitigation bank shall:

- (1) Afforest or reforest an area of land in accordance with a forest mitigation bank agreement;
- (2) 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 Town of Indian Head and the Department of Natural Resources;
- (3) 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 Town of Indian Head.
- (4) Use native plant materials for afforestation or reforestation unless inappropriate; and
- (5) Cause trees to be planted which:
  - (a) Establish or enhance forested buffers adjacent to intermittent and perennial streams and coastal bays to widths of at least 50 feet;
  - (b) Establish or increase existing forested corridors, which, where practical, should be a minimum of 300 feet in width to facilitate wildlife movement, to connect existing forests within or adjacent to the site;
  - (c) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
  - (d) Establish or enhance areas in 100-year floodplains;
  - (e) Stabilize slopes of 25 percent or greater;
  - (f) Stabilize slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
  - (g) Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way; or
  - (h) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate.

C. A person proposing to create a forest mitigation bank shall submit to the Town of Indian Head a:

(1) Completed application on a form approved by the Town of Indian head which has been signed by an authorized individual in conformance with COMAR 08.19.04.02I;

(2) Forest mitigation bank plan which contains a:

(a) Vicinity map of the proposed mitigation bank site;

(b) Simplified forest stand delineation which meets the criteria in COMAR 08.19.04.02;

(c) Detailed afforestation or reforestation plan, which shall include a timetable and description of the site and soil preparation needed, species, size, and spacing to be utilized, 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; and

(d) Proposed 3-year maintenance agreement that;

(i) Sets forth how the areas afforested or reforested will be maintained to ensure protection and satisfactory establishment,

(ii) Complies with COMAR 08.19.04.05C(4)(a), and

(iii) Includes watering and reinforcement planting provisions if survival falls below required standards;

(3) Copy of the deed to the property;

(4) Survey the other legally sufficient description of the bank site for inclusion in the deeds of easement, deed restrictions, or covenants;

(5) Title report or other assurance that:

(a) 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

(b) There is legally sufficient access to the forest mitigation bank site which can be used by the Town of Indian head and its assignees to inspect the forest mitigation bank; and

(6) 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 offsite afforestation or reforestation requirements.

D. The owner of an approved forest mitigation bank shall enter into an agreement with the Town of Indian Head which contains:

(1) The approved reforestation or afforestation plan;

(2) The approved system for marking and tracking which portions of the bank have been debited; and

(3) An acknowledgement that the bank may not debit any portion of the afforested or reforested land until 3 years of successful growth has been achieved unless the banker has posted a bond or alternate form of security.

## Section XI Recommended Tree Species

### 11.1 Recommended Tree Species List.

A. Tree species used for afforestation or reforestation shall be native to the county, when appropriate, and selected from a list of approved species established by the Town.

B. The town shall adopt, by reference to the State of Maryland Forest Conservation Manual, a list of tree species to be used for any required afforestation or reforestation.

## Section XIII Financial Security for Afforestation and Reforestation

### 12.1 Bonding.

A. A person required to conduct afforestation or reforestation under this ordinance shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Town. The surety shall:

- (1) Assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;
- (2) Be in an amount equal to the estimated cost, as determined by the Town, of afforestation and reforestation; and
- (3) Be in a form and of a content approved by the Town.

B. After one growing season, the person required to file a bond under Section 12.1 (A) of this ordinance may request reduction of the amount of the bond or other financial security by submitting a written request to the Town with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met.

C. The Town shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:

- (1) The number of acres,
- (2) The proposed method of afforestation or reforestation,
- (3) The cost of planting materials or replacement materials,
- (4) The cost of maintenance of the afforestation or reforestation project, and
- (5) Other relevant factors.

D. If, after two growing seasons, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Department of Natural Resources Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.

E. A local forest conservation program may incorporate the financial security set forth in Section 12.1 A – D of this ordinance or in COMAR 08.19.05.01B.

## Section XIII Standards for Protecting Trees from Construction Activities

### 13.1 Protection Devices.

A. The Town shall adopt by reference to the Department of Natural Resources Forest Conservation Manual standards for the protection of trees from construction activity.

B. Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this ordinance the applicant shall demonstrate to the Town that protective devices have been established.

## **Section XIV Variance**

### **14.1 Procedure.**

A. A person may request a variance from this ordinance or the requirements of Natural Resources Article, §§5-1601—5-1612, Annotated Code of Maryland, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

B. An application for a variance shall:

- (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- (3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- (4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- (5) Verify that the request does not arise from a conditions relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- (6) Verify that the granting of a variance will not adversely affect water quality.

C. The Town shall make findings that the applicant has met the requirements in Subsections A and B of this ordinance before the Town may grant a variance.

D. Notice of a request for a variance shall be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

## **Section XV Penalties**

### **15.1 Enforcement.**

A. Noncompliance Fees.

- (1) A person found to be in noncompliance with this ordinance, regulations adopted under this ordinance, the forest conservation plan, or the associated 3-year maintenance agreement, shall be assessed by the Town the penalty of \$1.00 per square foot of the area found to be in noncompliance with required forest conservation.
- (2) Money collected under Subsection A(1) of this ordinance shall be deposited in the forest conservation fund as required by Section X of this ordinance, and may be used by the Town for purposes related to implementing this ordinance.

B. Violation.

- (1) In addition to the provisions under Subsection A of this section, a person who violates a provision of this ordinance or a regulation or order adopted or issued under this ordinance is liable for a penalty not to

exceed \$1,000, which may be recovered in a civil action brought by the Town.

(2) Each day a violation continues is a separate violation.

C. The Town may seek an injunction requiring the person to cease violation of this ordinance and take corrective action to restore or reforest an area.

D. The local program may adopt the enforcement provisions under COMAR 08.19.06.03.

#### **Section XVI Annual Report**

16.1 On or before March 1, of each year, the Town shall submit to the Department of Natural Resources a report on:

A. The number, location, and type of projects subject to the provisions of this ordinance;

B. The amount and location of acres cleared, conserved, and planted, including any area located in the 100-year floodplain, in connection with a development project;

C. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and

D. The costs of implementing the Forest Conservation Program.

E. Location and size of all forest mitigation banks approved during the past year with description of the priority areas afforested or reforested by the bank;

F. Number of acres debited from each forest mitigation bank since the last annual report; and

G. Forest mitigation banks inspected since the last annual report.

H. Number, location, and types of violations and types of enforcement activities conducted; and

I. The size and location of all conserved and planted forest areas shall be submitted in an electronic geographic information system or computer aided design format if possible. If not possible, the location shall be given by Maryland State Plane Grid Coordinates and 8 digit subwatershed.

#### **Section XVII Biennial Review by the Department of Natural Resources**

17.1 The Town of Indian Head shall submit the necessary documentation to comply with COMAR 08.19.02.04.

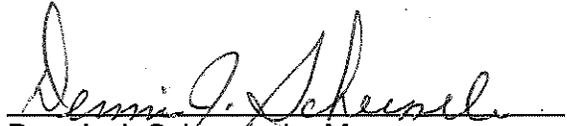
#### **Section XVIII Conflicts with Article 18, Part II of Town of Indian Head Zoning Ordinance**

18.1 Lots smaller than the minimum lot size covered by this ordinance shall be governed by Article 18, Part II of the Town of Indian Head Zoning Ordinance. Lots meeting the criteria of this ordinance shall be governed by the provisions of this ordinance and not by Article 18, Part II of the Town of Indian Head Zoning Ordinance.

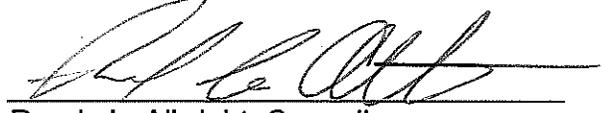
#### **Section XIX Effective Date and Subsequent Amendments**

19.1 This ordinance is hereby enacted and becomes effective July 2, 2012. This ordinance may be amended as required. All amendments to this ordinance are subject to the approval of the Department of Natural Resources.

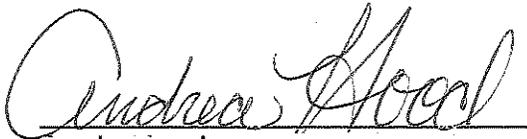
INDIAN HEAD TOWN COUNCIL

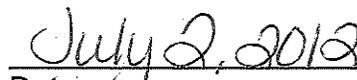
  
Dennis J. Scheessele, Mayor

  
Edward W. Rice, Vice Mayor

  
Randy L. Albright, Councilman

Attest:

  
Andrea Hood, Town Clerk

  
Date