

## Chapter 10.5 FOREST AND TREE PRESERVATION<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 10.5-1. Purpose.

The purpose of this ~~chapter~~Chapter is to:

- (1) Encourage the preservation and enhancement of the City's urban forests.
- (2) Replace tree cover in non-forest areas within the City.
- (3) Establish procedures, standards and requirements that protect trees and forests during and after development activity and minimize tree loss due to development activity.
- (4) Establish procedures, standards and requirements for afforestation and reforestation of land within the City.
- (5) Meet the requirements of ~~the Natural Resources Article~~, Sections 5-1601 through 5-1613 of the ~~Annotated Code of Maryland~~Natural Resources Article.

~~(Ord. No. 12-07, 7-16-07)~~

#### Sec. 10.5-2. Scope.

Except as otherwise provided, this ~~chapter~~Chapter applies to all applications for a covered ~~permit or covered~~ approval as defined in section 10.5-5 of this ~~chapter~~Chapter made on or after January 1, 1993.

~~(Ord. No. 12-07, 7-16-07)~~

#### Sec. 10.5-3. Interpretation.

- (a) All references in this ~~chapter~~Chapter to provisions of the Annotated Code of Maryland shall refer to the provisions as they currently exist and as they may be amended.
- (b) References to COMAR are to the Code of Maryland Regulations and refer to the referenced provisions of those regulations as they currently exist and as they may be subsequently amended.
- (c) The provisions of this ~~chapter~~Chapter shall be interpreted and applied in conjunction with the ~~specifications and clarifications contained in the~~ Forest Conservation Manual. In the event of any conflict between the provisions of this Chapter and those of the Forest Conservation Manual, this Chapter shall govern.

~~(Ord. No. 12-07, 7-16-07)~~

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<sup>1</sup>Editor's note(s) — ~~Ord. No. 12-07, adopted July 16, 2007, amended chapter 10.5 in its entirety to read as herein set out. Formerly, chapter 10.5 pertained to similar subject matter, and derived from Ord. No. 21-92, adopted December 14, 1992; Ord. No. 2-00, adopted March 27, 2000; Ord. No. 10-06, adopted November 13, 2006.~~

#### Sec. 10.5-4. Administration.

- (a) *The Mayor and Council.* The Mayor and Council shall:
- (1) Establish by resolution fees to cover the cost of administering this ~~chapter~~Chapter.
- ~~(2) Adopt by resolution (b) *The City Manager.* The City Manager shall:~~
- ~~(1) Designate a Forestry Official to interpret and administer the provisions of this Chapter;~~
  - ~~(2) Prepare and submit the reports required by section 5-1613 of the Natural Resources Article;~~
  - ~~(3) Promulgate and keep current a Forest Conservation Manual which shall meet meets the minimum requirements of the State Forest Conservation Technical Manual and shall include, but not be limited to includes:~~
    - a. Standards for preparing and evaluating a ~~Forest Stand Delineation~~an NRI/FSD;
    - b. Standards for preparing and evaluating a ~~Forest Conservation Plan~~forest conservation plan, including priorities for retention, reforestation, and afforestation;
    - c. A recommended native tree species list; ~~of the Mid-Atlantic Region;~~
    - ~~d. A list of tree species that may not be used to satisfy the planting requirements of this Chapter. This list must include, at a minimum, all trees identified by the Maryland Department of Natural Resources as invasive. This list must not include any native tree, unless such tree is identified by the Forestry Official as presenting severe growth challenges, including, but not limited to, susceptibility to critical pest infestation, disease, or hazardous growth;~~
    - e. Forest and tree protective measures to be provided ~~prior~~before, during, and after clearing or construction; and
    - ef. Other standards, requirements, and clarifications consistent with this ~~chapter~~Chapter.
- ~~(4) Execute maintenance agreements pursuant to this Chapter on behalf of the Mayor (b) *The City Manager.* The City Manager, through the City Forester and other authorized designees shall:~~
- ~~(1) Administer the provisions of this chapter and the City's Conservation Manual.~~
  - ~~(2) Prepare and submit the reports to the Senate Environmental Affairs Committee and the House Environmental Matters Committee required by Natural Resources Article, Section 5-1613 of the Annotated Code of Maryland.~~
  - ~~(3) Develop procedures and policies necessary to administer this chapter.~~
- and Council.
- (c) *The City Forester/Forestry Official.* The City Forester, or such other individual or individuals as may be designated by the City Manager shall: ~~Forestry Official shall:~~
- (1) Review and approve or disapprove ~~Forest Stand Delineations and Forest Conservation Plans~~NRI/FSDs, forest conservation plans, tree save plans, and other submissions, as provided for by this ~~chapter~~Chapter;
  - (2) Interpret and apply the standards of this Chapter and the Forest Conservation Manual;
  - (3) Develop technical standards and specifications for forest and tree protective measures and planting of trees and forests;
  - (4) Inspect ~~development activity~~properties to determine compliance with approved forest conservation plans, tree save plans, and the provisions of this ~~chapter~~Chapter;

- (5) Issue tree removal permits in accordance with section 10.5-32; and
- (6) Assess fines and administrative penalties pursuant to section 10.5-34.

~~(Ord. No. 12-07, 7-16-07)~~

#### **Sec. 10.5-5. Definitions.**

For purposes of this ~~chapter and the Conservation Manual~~ Chapter, the following words, terms and phrases shall have the meaning respectively ascribed to them as set forth below. Any word, term, or phrase not defined herein ~~or in the Conservation Manual~~ shall have the meaning ascribed to ~~them~~ it in state law or regulation.

~~Abutting and adjacent means sharing a common property boundary. Two properties are considered abutting and adjacent if they are separated by a public right-of-way.~~

~~Afforestation means the establishment of tree cover on an area from which it has always or very long been absent, or the planting of open areas which are not presently in forest cover.~~

~~Afforestation level is the percentage of a ~~site tract~~ that is required to be forested based on the zoning under section 10.5-22 of this Chapter.~~

~~Applicant means a person who applies for a covered ~~permit or~~ approval as defined in this section.~~

~~Approval or approved, when referring to the approval of a Forest Stand Delineation, or a Forest Conservation Plan, (including an NRI/FSD or a preliminary conservation plan), or final FCP, means the approval of said delineation or plan by the City Forester.~~

~~Board of Appeals means the Board of Appeals created by Chapter 25.~~

~~Break even point means the point at which forest conservation requirements can be met solely through forest retention.~~ ~~Forestry Official.~~

~~Caliper means the diameter measured in inches measured at ~~two (2)~~ six inches above the root collar.~~

~~Champion tree means the largest tree of its species within the United States, the State, county, or municipality.~~

~~Chapter means a chapter of the Rockville City Code.~~

~~City means the City of Rockville.~~

~~Conservation Manual~~ City Manager means the ~~City's Forest Conservation Manual as defined in this section.~~

~~Conservation plan means a Forest Conservation Plan as defined in this section.~~

~~Covered activity means any of person appointed by the following activities occurring in connection with a tract within Mayor and Council of Rockville to serve as the City:~~

~~(1) Subdivision Manager pursuant to Article VI of ~~land~~ the City Charter.~~

~~(2) An activity that requires a grading and ~~COMAR~~ means the Code of Maryland Regulations.~~

~~Covered approval means a sediment control permit;~~

~~(3) — An activity that requires, a subdivision plan (preliminary or final), a site plan ~~or~~, a project plan, or a site plan amendment to any of the foregoing, or project plan amendment;~~

~~Covered approval means approval of a subdivision (preliminary or final), site plan or project plan or amendment thereto, or of an amendment to a planned development, as defined herein.~~

~~Covered permit means a sediment control permit issued by the City. A sediment control permit is required by chapter 19 before any grading can be performed.~~

*Critical habitat area* means a critical habitat for a threatened or endangered species and its surrounding protection area. A critical habitat area is an area that:

- (1) Is likely to contribute to the long-term survival of the species;
- (2) Is likely to be occupied by the species for the foreseeable future; and
- (3) Constitutes a habitat of the species which is considered critical under sections 4-2A-04 and 10-2A-04 of the Natural Resources Article, ~~§§ 4-2A-04 and 10-2A-04, Annotated Code of Maryland.~~

*Critical root zone* means the zone in which the majority of a tree's roots lay, as calculated by the Forest Conservation Manual.

*DBH* means the diameter in inches at breast height of a tree's main trunk or stem, rounded to the nearest inch and measured four and a half feet above ground level.

*Declaration of intent* means a statement executed and recorded among the Land Records by a property owner verifying that proposed activity is either exempt or excepted, in whole or in part, from a requirement of this ~~chapter~~Chapter, and shall contain the following:

- (1) Satisfactory assurances of limited or no additional development activity on the tract;
- (2) An agreement to comply with the provisions of this ~~chapter~~Chapter at such time as any additional development occurs on the property; and
- (3) Such other provisions deemed appropriate by the City.

*Development activity* means grading, excavation, or construction activities ~~occurring on a specific tract, and includes, including~~ redevelopment.

~~*Development project completion* means:~~

- ~~(1) The release of all required bonds;~~
- ~~(2) Acceptance of the project's streets, utilities, and public improvements by the City; or~~
- ~~(3) Designation by the City or State that a:~~
  - ~~a. Development project has been completed, or~~
  - ~~b. Particular stage of a staged development project has been completed.~~

~~*DNR* means the State of Maryland Department of Natural Resources.~~

*Environmental ~~guidelines~~Guidelines* means guidelines adopted by resolution of the Mayor and Council ~~Resolution No. 11-99 establishing guidelines~~ for the protection and enhancement of the City's natural resources ~~as that document may be amended or revised.~~

~~*Forest.*~~

- ~~(1) "Forest" means a contiguous biological community dominated by stand of trees and other woody plants covering a land area of five thousand (that is at least 5,000) square feet or greater.~~
- ~~(2) "Forest" includes:~~
  - ~~a. Areas that have in size exhibiting at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having a two-inch or greater diameter transect of at four and one-half (4½) least 50 feet above the ground and larger; and~~
  - ~~b. Areas in width, including areas that have been cut but not cleared.~~

~~(3)"Forest" does not include orchards converted to other land uses.~~

*Forest conservation* means the retention of existing forest or the creation of new forest at the levels set by the City.

*Forest conservation and management agreement* means an agreement as stated in the Tax-Property Article, § 8-211, Annotated Code of Maryland.

*Forest ~~Conservation Plan~~conservation plan or FCP* means a plan providing for the protection, maintenance, replacement, reforestation, and afforestation of the forest as provided ~~by section 10.5-13 in this Chapter.~~ A forest conservation plan includes a preliminary forest conservation plan, an amended forest conservation plan, and a final forest conservation plan

*Forest Conservation Manual* means the ~~detailed document~~manual adopted by resolution of the Mayor and Council containing technical specifications and standards of performance used in the implementation of this ~~chapter~~Chapter, including the preparation of ~~Forest Stand Delineations~~NRI/FSDs and ~~Forest Conservation Plans~~FCPs.

*Forest Conservation Worksheet* means ~~a worksheet used for calculating reforestation and afforestation requirements.~~

*Forest conservation threshold* means ~~the percentage of the tract area at which the reforestation requirement under section 10.5-22 changes from a ratio of one-quarter (¼) acre planted for each acre removed above the threshold to a ratio of three (3) acres planted for each acre removed below the threshold.~~

*Forest cover* means the area of a tract meeting the definition of forest.

*Forest stand delineation* means ~~the methodology for evaluating the existing vegetation on a site proposed for development activity, as provided in this chapter, and the conservation manual.~~

*Forestry Official* means ~~the person or persons designated by the City Manager to fulfill the responsibilities of the Forestry Official under this Chapter. The Forestry Official must be a Qualified Professional.~~

*Intermittent stream* means a stream in which surface water is absent during a portion of the year as shown on the most recent seven and one-half ~~(7½)~~minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

*Issuing Authority* means ~~that employee, division, department, Board, or Commission of the City authorized to issue a covered permit or grant a covered approval.~~

*Land ~~records~~Records* means the Land Records of Montgomery County, Maryland.

*Limits of disturbance* means the ~~limits of disturbance delineated in a sediment control permit pursuant to Chapter 19 or, where a sediment control permit is not required, the~~ area within which all construction, grading, excavating, and clearing will occur.

*Linear project* means ~~a project whose configuration is elongated with nearly parallel sides and 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. Linear projects may traverse fee simple properties through defined boundaries or through easement rights.~~

*Long-term protective agreement* means ~~a long-term measure to protect all land forested, afforested, reforested, or retained as forest, or trees required to be planted, under this Chapter, consistent with the requirements of COMAR 08.19.05.02.~~

*Maintenance agreement* means ~~a short-term management agreement, between an applicant and the City that details how the areas designated for a minimum of five (5) years, relating to afforestation or, reforestation plans required under, forest retention, and other tree plantings required by this Chapter will be maintained to~~

ensure protection or satisfactory establishment of tree plantings for a minimum of five years in a manner consistent with the requirements of COMAR 08.19.05.01.

Native tree means a tree native to the Mid-Atlantic region, as identified in the Forest Conservation Manual.

Natural Resources Article, § 5-1605, means the Natural Resources Article of the Maryland Annotated Code of Maryland and this chapter.

Natural Resources Inventory ~~or Forest Stand Delineation or NRI~~ means/FSD means the information necessary to allow an evaluation of existing natural resources on a tract for conformance with this chapter. An NRI/FSD must be a complete analysis of existing natural features, forest, and tree cover on ~~site as further defined and described in the Environmental Guidelines~~ a site. Natural features include topography, steep slopes, perennial, intermittent and ephemeral streams, major drainage courses, 100-year floodplains, wetlands, soils and geological conditions, critical habitats, aerial extent of forest and tree cover, cultural features and historic sites and necessary buffers, as provided in this chapter and the Forest Conservation Manual.

~~Nontidal wetlands.~~

~~(1) "Nontidal wetlands" means an area that is:~~

~~a. (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 typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and~~

~~b. (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.~~

~~(2) "Nontidal wetlands" does not include tidal wetlands regulated under Title 9 of the Natural Resources Article, Title 9, Annotated Code of Maryland.~~

~~Offsite means outside of the limits of the area encompassed by a tract, but within City limits.~~

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.

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

~~100-year floodplain means an area along or adjacent to a body of water with ground surface elevations that are inundated by the waters of the 100-year flood.~~

~~Park buffer means an area of separation that preserves the integrity of a park/recreation area by preventing physical or aesthetic encroachment from adjoining land uses, as further defined and described in the Environmental Guidelines.~~

~~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.~~

~~Planned development means a development activity located in a planned development zone as set forth in chapterChapter 25 (Zoning Ordinance), section 25.14.07.~~

~~Priority planting areas means those areas identified in subsection 10.5-23(b) as priority areas for afforestation and reforestation.~~

~~Priority retention areas means those areas identified in subsection 10.5-21(b) as priority areas for forest and tree retention and protection.~~

*Qualified ~~preparer~~Professional* means an individual qualified to prepare a ~~Forest Stand Delineation~~NRI/FSD and a ~~Forest Conservation Plan~~FCP, including a licensed Maryland Forester, a licensed landscape architect, and any individual who otherwise meets the standards for a qualified professional as specified in COMAR 08.19.06.01.

*Recorded lot, for purposes of this chapter only* means a unit of land, the boundaries of which have been established by a deed or subdivision plat recorded in the land records of Montgomery County, but does not include an ownership lot as defined in chapter 25 (Zoning Ordinance) of this Code, as may be amended.

*Reforestation or reforested* means the replacement of removed forested areas by the creation of a biological community dominated by trees and other woody plants containing at least ~~one hundred (100)~~ live trees per acre with at least ~~fifty (50)~~ percent of those trees having the potential of attaining a two-inch or greater ~~diameter~~DBH measured at four and one-half ~~(4½)~~ feet above the ground, within seven ~~(7)~~ years; or establishment of a forest according to procedures set forth in the Forest Conservation Manual.

*Retention* means the deliberate ~~holding and protecting~~protection of existing trees, shrubs or plants on ~~the site~~a tract according to established standards as provided in the ~~City of Rockville~~ Forest Conservation Manual.

*Significant tree* means a champion tree, a specimen tree, or a tree located within a forest with a ~~diameter~~DBH of ~~twenty-four (24)~~ inches or more, a tree located outside of a forest with a ~~diameter~~DBH of ~~twelve (12)~~ inches or more, or a tree with a DBH of six inches or more located within twenty-five the limits of disturbance or within 25 feet of the limits of disturbance ~~with a diameter of six (6) inches or more. Trees identified as invasive in accordance with section 10.5-4(b)(5), are not significant trees.~~

*Single dwelling unit* ~~residential lot, for purposes of this chapter~~ means a ~~lot regardless of zone, improved with a structure containing not more than one (1) single dwelling unit.~~ This term includes townhouses and semi-detached dwellings located on separate lots and single dwelling units that are modified to include an accessory apartment ~~approved by special exception. This term does not include any common area owned by a homeowner's association or similar entity.~~ dwelling unit.

*Solar photovoltaic facility* means a facility composed of one or more solar panels combined with an inverter and other electrical and mechanical components that use energy from the sun to generate electricity for commercial sale.

*Specimen tree* means a tree with a ~~diameter~~DBH equal to or greater than ~~thirty (30)~~ inches or that is ~~seventy-five (75)~~ percent of the ~~diameter~~DBH of the state champion tree of that species.

*State Forest Conservation ~~Technical~~ Manual* means the Forest Conservation Technical Manual prepared for the Maryland Department of Natural Resources for use in the implementation of the 1991 Forest Conservation Act, as it currently exists and as it may be subsequently amended.

*Stream buffer* means a strip of natural vegetation contiguous with and parallel to the bank of a perennial or intermittent stream and designed to protect the stream, as further defined and described in the Environmental Guidelines.

*Stream restoration project* means an activity that:

- (1) Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;
- (2) Avoids and minimizes impacts to forests and provides for replanting onsite an equivalent number of trees to the number removed by the project;
- (3) May be performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the State or local government to achieve or maintain water quality standards; and

~~(4) Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.~~

~~Street tree~~ means any tree planted in the public right-of-way ~~or within a public access easement granted to the City for a private street.~~

~~Subdivision~~ means ~~the division of a lot, tract or parcel~~ a subdivision of land into two (2) or more lots, plats sites, or other divisions of land or assemblage of land for the purpose, whether immediate or future, of sale, lease, transfer of ownership, or development. "Subdivision" includes resubdivision, but ~~as defined in Chapter 25, except that subdivision~~ does not include the creation of ownership lots as that term is defined in ~~chapter 25 (Zoning Ordinance).~~ Chapter 25.

~~Tract~~ means a property or unit of land for which an application for a covered ~~permit or~~ approval is filed. A tract may consist of one or more lots or parcels of land.

~~Tract area~~ means the total area of a tract, including both forested and non-forested areas, to the ~~nearest one hundred (100)~~ square feet.

~~Tract for a planned development activity within a planned development zone~~ means the entire property within the zone.

~~Tract, subdivision~~ means all that property encompassed by a plat of subdivision.

~~Tree~~ means a large, branched woody plant having one or several self-supporting stems or trunks ~~and numerous branches~~ that reach a height of at least ~~twenty (20)~~ feet at maturity.

~~Tree replacement~~ means replacement of individual ~~significant~~ trees removed ~~whether or not as a result of development activity.~~

~~Tree save plan~~ means a plan providing for the analysis, protection, maintenance, and supplementation of existing natural features and resources on a tract, in accordance with the Forest Conservation Manual.

~~Watershed~~ means all land lying within an area described as a subbasin in water quality regulations adopted by the ~~State~~ Maryland Department of the Environment under COMAR 26.08.02.08. (Ord. No. 12-07, 7-16-07; Ord. No. 10-09, § 1, 3-23-09)

**Secs. 10.5-6—10.5-10. Reserved.**

## **ARTICLE II. ~~FOREST STAND DELINEATION~~ NRI/FSDS AND FOREST CONSERVATION PLANS**

### **Sec. 10.5-11. General requirements.**

- (a) Except as ~~otherwise~~ provided ~~this chapter or in the Conservation Manual, a person filing in subsection (b) of this section, an application for a covered permit or approval shall~~ applicant must submit a Forest Stand Delineation an NRI/FSD and a Forest Conservation Plan ~~forest conservation plan~~ as part of, or in connection with, ~~the application~~ a covered approval.
- (b) ~~Exceptions. The submissions referenced in~~ An applicant is exempt from the requirements of subsection (a) ~~are not required for the following activities:~~



- 
- (1) ~~Where an application for permit~~Any activity conducted on one lot improved or approval is filed~~proposed by the owner of an applicant to be improved with~~ a single dwelling unit~~residential lot in connection with construction~~, provided that
- a. ~~The activity does not result in the cumulative cutting, clearing, or land disturbing~~grading of more than 20,000 square feet of forest;
  - b. ~~The activity will not involving~~result in the cutting, clearing, or grading of any forest or trees that were subject to the requirements of a previous final forest conservation plan approved under this Chapter;
  - c. ~~The activity does not require the~~ subdivision of land; and
  - d. ~~For activity including the construction of a new single dwelling unit or the demolition, repair, or renovation of more than 50 percent of the floor area of an existing single dwelling unit, the applicant is required to plant or preserve at least three trees, consistent with the Forest Conservation Manual, on the lot and where less than twenty thousand (20,000) square feet of forest is disturbed, the activity is proposed.~~
- (2) Where a ~~Final Forest Conservation Plan has been~~final forest conservation plan was approved within the preceding five ~~(5)~~ years in connection with the same ~~development~~ activity, unless the ~~City Forester~~Forestry Official determines that there has been a significant alteration in the environment of the ~~site~~tract or change in applicable law, policy, or regulation since the approval of the ~~final forest conservation~~ plan.
- (3) ~~For a site plan, project plan or site plan or project plan amendment, where a sediment control permit is not required for the development activity, unless the proposed development activity shows disturbance within or adjacent to the critical root zone of significant trees or trees protected by an existing Forest Conservation Easement. This exception applies only to the submission of a Forest Conservation Plan. A Forest Stand Delineation must accompany all applications for site plans, project plans, or amendments thereto, unless exempted by subsections (b)(1), (2), or (4) of this section. Any activity that does not result in the disturbance of 5,000 square feet or greater of land area or 100 or more cubic yards of earth, impact the critical root zone of any significant tree, or impact the critical root zone of any tree subject to the requirements of a previous forest conservation plan approved under this Chapter.~~
- (4) Where an application for subdivision of a tract is filed for the purpose of facilitating the financing or transfer of the tract or portion thereof, and where no additional development on the tract occurs, provided that the property owner executes and records among the Land Records a Declaration of Intent and/or such other documents, acceptable in form and content to the ~~City Forester~~Forestry Official and the City Attorney setting forth the obligation for compliance with this chapter in connection with future development of the tract.
- ~~(5) On a site with an approved preliminary development plan, that was previously granted an exemption from afforestation under the single recorded lot exemption, provided that: (1) there is no forest on site; and (2) no significant trees will be removed as a result of the covered activity or approval.~~
- (5) ~~Any activity requiring a site plan, project plan, or site plan or project plan amendment, for which a sediment control permit is not required, unless the proposed activity shows disturbance within or adjacent to the critical root zone of one or more significant trees or trees protected by an existing forest conservation plan;~~
- (6) ~~Any activity on publicly-owned property required to install electric vehicle charging infrastructure, solar panels, or improvements necessary to comply with the Americans with Disabilities Act, provided that the activity is within an area previously improved with impervious surfaces and the applicant has received approval of a tree save plan.~~

- (7) A stream restoration project, provided that the applicant has received approval of a tree save plan and executed a binding maintenance agreement of at least five years with the affected property owner where the applicant and the property owner are not the same.
- (8) The cutting or clearing of public utility rights-of-way for electric generating stations licensed pursuant to sections 7-204, 7-205, 7-207, or 7-208 of the Public Utilities Article of the Annotated Code of Maryland, provided that:
- a. Any required certificates of public convenience and necessity have been issued in accordance with § 5-1603(f) of this subtitle; and
  - b. The cutting or clearing of the forest is conducted so as to minimize the loss of forest.
- (9) Routine maintenance of public roads and utility rights-of-way that does not result in the cutting, clearing, or grading of more than 10,000 square feet of forest or any forest or significant trees subject to the requirements of a previous forest conservation plan approved under this Chapter.
- (10) Linear projects that do not result in the cutting, clearing, or grading of more than 10,000 square feet of forest or any forest or significant trees subject to the requirements of a previous forest conservation plan approved under this Chapter.
- (11) The maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as 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.
- (c) The ~~Forest Stand Delineation and Forest Conservation Plan~~NRI/FSD and FCP required by this section shall be prepared by, and exhibit the stamp/certification and signature of, a Qualified ~~Preparer as defined in section 10.5.5 of this chapter.~~Professional.
- (d) No application for a covered ~~permit or~~ approval is complete until the submissions required by this ~~chapter~~Chapter are accepted as complete by the ~~City Forester.~~ The City Forester~~Forestry Official. The Forestry Official~~ may accept submissions substantially consistent with the purpose of this ~~chapter~~Chapter and ~~thesections 5-1602 through 1612 of~~ Sections 5-1602 through 1612 of the ~~Natural Resources Article.~~ Annotated Code of Maryland.
- (e) All covered ~~permits and~~ approvals shall be issued conditioned on approval of, and compliance with a ~~Forest Conservation Plan~~an FCP.

~~(Ord. No. 12-07, 7-16-07; Ord. No. 10-09, § 2, 3-23-09; Ord. No. 21-09, 10-12-09; Ord. No. 1-11, 2-14-11)~~

#### **Sec. 10.5-12. Criteria for ~~forest stand delineations~~NRI/FSDs.**

- (a) ~~A Forest Stand Delineation~~An NRI/FSD encompassing the entire tract, or such portion of the tract as may be approved by the ~~City Forester~~Forestry Official, shall be used during the preliminary review of ~~the covered permit or approval~~ an application, ~~for a covered approval~~ to determine the most suitable and practical areas for forest conservation and shall serve as the basis for ~~a Forest Conservation Plan~~an FCP.
- (b) ~~A Forest Stand Delineation~~An NRI/FSD shall contain the following information:
- (1) A completed application form supplied by the City and signed by the applicant, the property owner, and the ~~qualified preparer~~Qualified Professional.
  - (2) A site vicinity map showing the location of the ~~site~~tract in relation to other properties within approximately one ~~(1)~~ square mile or more, including forested and sensitive areas adjacent to the ~~site~~tract;

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- (3) An environmental features map, also known as a ~~Forest Stand Delineation~~ NRI/FSD Map, exhibiting a stamp/certification and signature of the ~~qualified preparer~~ Qualified Professional. The ~~Forest Stand Delineation~~ NRI/FSD Map shall be prepared at the same scale as the proposed development plan and shall show the following:
- a. One hundred-year nontidal floodplains in watersheds ~~four hundred (400)~~ acres or larger, or for class III streams;
  - b. Intermittent streams and perennial streams, including buffers required by the Environmental Guidelines;
  - c. Steep slopes of ~~twenty-five (25)~~ percent or more;
  - d. Critical habitat areas;
  - e. Nontidal or tidal wetlands, including buffers required by the Environmental Guidelines;
  - f. Topographic contours and intervals;
  - g. Hydric soils, erodible soils on slopes of ~~fifteen (15)~~ percent or more, and soils with structural limitations as classified by USDA soil surveys;
  - h. Survey location of all significant trees;
  - i. A significant tree summary table identifying the species, size, and description of condition of all significant trees located on the map;
  - j. Identification of critical root zones extending from trees located on adjacent tracts, including the location, species and condition estimate of the trees;
  - k. A statement noting the presence or absence of rare, threatened or endangered species;
  - l. A statement noting the presence or absence of cultural and/or historic resources—;
  - m. Forest suitable for forest interior-dwelling species; and
  - n. Forest that is most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution.
- (4) Such additional information required by the Forest Conservation Manual for simplified, ~~intermediate~~, and full ~~Forest Stand Delineations~~ NRI/FSDs; and
- (5) Such other information that the ~~City Forester or issuing authority~~ Forestry Official determines is necessary to implement this ~~chapter~~ Chapter.
- (c) The Forest Conservation Manual shall set forth the criteria and requirements for submission of a simplified, ~~intermediate~~ and full ~~Forest Stand Delineation~~:
- ~~(1) A simplified Forest Stand Delineation may be submitted where forest does not currently exist on the site or where existing forest will not be cut, cleared, or graded for the proposed development, and where adequate forest and tree protection devices and long-term agreement are established for the protection of existing forest and significant trees.~~
  - ~~(2) An intermediate Forest Stand Delineation may be submitted where the forest retention on a tract will be equal or greater to the break-even point as calculated in the forest conservation worksheet and priority retention areas will not be disturbed.~~
  - ~~(3) A full Forest Stand Delineation shall be used where a development does not qualify for a simplified or intermediate Forest Stand Delineation.~~ NRI/FSD.

- 
- (d) The ~~City Forester~~Forestry Official may accept ~~a Forest Stand Delineation that substantially~~an NRI/FSD that complies with this ~~chapter~~Chapter and the Forest Conservation Manual and furthers the goals of this ~~chapter~~Chapter.
- (e) The submissions required by this section are in addition to any other submissions required in connection with the application for a covered ~~permit or~~ approval. However, if any submission required by this section duplicates the submission required by any other law or ordinance, regulation, decision, or policy, only one ~~(4)~~ submission of the same information is required.
- (f) An approved ~~Forest Stand Delineation~~NRI/FSD may remain in effect, and serve as the basis for a ~~Forest Conservation Plan~~forest conservation plan for no longer than five ~~(5)~~ years, except that the ~~City Forester~~Forestry Official may require submission of a revised ~~Forest Stand Delineation~~NRI/FSD if ~~site~~ conditions on the tract or applicable law or ~~regulation~~regulations change within five years of the original approval.

~~(Ord. No. 12-07, 7-16-07)~~

### **Sec. 10.5-13. Criteria for forest conservation plans.**

- (a) ~~A Forest Conservation Plan (Conservation Plan)~~An FCP shall be based on an approved ~~Forest Stand Delineation~~NRI/FSD and shall give priority to, and provide for, the protection and maintenance of any existing forest and significant trees within the ~~Forest Stand Delineation Area~~area covered by the NRI/FSD which may be adversely affected by the proposed development activity ~~for~~on the tract.
- (b) Where the existing forest and individual significant trees cannot be retained, the ~~Conservation Plan shall~~FCP must provide for tree replacement, reforestation, and afforestation in accordance with ~~article~~Article III. of ~~this Chapter.~~
- (c) Preliminary ~~Forest Conservation Plan~~FCP.
- (1) ~~A Preliminary Forest Conservation Plan~~Except where a development will disturb less than ten percent of a tract area, an applicant may be submittedsubmit a preliminary FCP in connection with:
- A preliminary plan of subdivision;
  - A project plan or site plan;
  - Any other situation where the ~~City Forester~~Forestry Official deems appropriate.
- (2) Requirements. A ~~Preliminary Forest Conservation Plan shall~~preliminary FCP must contain the following information:
- The approved ~~Forest Stand Delineation~~NRI/FSD for the ~~site~~tract drawn to scale;
  - The applicable zone and pertinent reforestation and afforestation threshold levels.
  - A table of area sizes for the following:
    - Existing tract area, floodplain area, and forest area.
    - Proposed areas of forest and tree retention.
    - Proposed areas of forest and tree removal.
    - Proposed areas of reforestation and afforestation.
  - A graphic delineation of the following areas:
    - Proposed forest and significant tree retention areas.

- 
- (ii) Proposed afforestation and reforestation areas.
  - (iii) Proposed limits of disturbance.
  - e. Written justification for disturbance of priority retention areas, including the reasons why the priority retention areas cannot be retained and how disturbed priority retention areas will be replaced through afforestation and reforestation.
  - f. Written justification for the proposed use and location of non-priority retention areas and of ~~on-site~~ and ~~off-site~~ afforestation, reforestation, and/or tree replacement areas.
  - g. Such other information as may be required by this ~~chapter~~Chapter or the Forest Conservation Manual.
  - h. Such other information that the ~~City Forester~~Forestry Official determines is necessary to implement this ~~chapter~~Chapter.
- (3) No development activity may occur on any portion of a tract covered by a ~~Preliminary Conservation Plan~~preliminary FCP without an approved ~~Final Conservation Plan~~final FCP for that portion of the tract.
- (4) An approved ~~Preliminary Forest Conservation Plan~~preliminary FCP shall remain in effect, and shall serve as the basis for the ~~Final Forest Conservation Plan~~final FCP with respect to forest and tree retention for the duration of the validity period of the underlying approval, unless the ~~City Forester~~Forestry Official determines that ~~site~~conditions on the tract have changed to the point where the preliminary approval is no longer accurate. Notwithstanding the foregoing, all ~~Final Forest Conservation Plans~~final FCPs shall comply with all other aspects of this Chapter in effect at the time of the approval of the ~~Final Forest Conservation Plan~~final FCP.
- (d) Final ~~Forest Conservation Plan~~FCP.
- (1) A ~~Final Conservation Plan~~final FCP must be submitted and approved prior to any development activity on a tract.
  - (2) A ~~Final Conservation Plan~~final FCP may be submitted for a portion of the area covered by an approved ~~Preliminary Conservation Plan~~preliminary FCP, provided that ~~any such Final Conservation Plan~~the final FCP must include forested areas in their entirety and the boundaries of said ~~Final Conservation Plan~~final FCP may not divide any forested area existing on the tract.
  - (3) Requirements. A ~~Final Conservation Plan~~final FCP must contain ~~all of~~ the following information:
    - a. All of the information required in subsection (c) and in the Conservation Manual for a ~~Preliminary Conservation Plan~~preliminary FCP.
    - b. Details and specifications of protective devices and measures to be used prior to and during construction activities to protect forest and significant trees, including information pertaining to the locations, types, implementation, and maintenance of the protective measures.
    - c. A graphic delineation of the limits of disturbance and soil stockpile areas.
    - d. A critical root zone analysis, including root zones extending on the tract from adjacent property.
    - e. Such other information as may be required by the Forest Conservation Manual.
    - f. A ~~short-term~~ maintenance agreement as described in section 10.5-25 to ensure protection and satisfactory establishment of forest and individual tree plantings for a minimum of five years that include biennial inspections in the spring and fall seasons.
    - g. A long-term protective agreement as described in section 10.5-26 for the protection of areas of forest conservation, including areas of afforestation, reforestation, and retention.

- h. Phasing and completion schedule for ~~tree~~ planting ~~the required trees~~.
  - i. Such other information that the ~~City Forester~~ Forestry Official determines is necessary to implement this ~~chapter~~ Chapter.
- (4) An approved Final Forest Conservation Plan is valid for five ~~(5)~~ years, except that the ~~City Forester~~ Forestry Official may require submission of a revised ~~Forest Conservation Plan~~ FCP if ~~site~~ tract conditions change within five years of the ~~Forest Conservation Plan~~ FCP approval.

(Ord. No. 12-07, 7-16-07; Ord. No. 10-09, § 2, 3-23-09)

#### Sec. 10.5-14. Submission, review and approval; revocation.

- (a) The ~~Forest Stand Delineation~~ NRI/FSD shall be submitted in connection with, ~~and in the same manner as,~~ the application for the covered ~~permit or~~ approval.
  - (b) In conjunction with, or subsequent to, the approval of the ~~Forest Stand Delineation~~ NRI/FSD, the applicant shall submit a ~~Preliminary or Final Forest Conservation Plan~~ preliminary or final FCP.
  - (c) The submitted ~~Forest Stand Delineation and Forest Conservation Plan~~ NRI/FSD and FCP shall be referred to the ~~City Forester~~ Forestry Official for review.
    - (1) The ~~City Forester's~~ Forestry Official's review shall be concurrent and coordinated with other aspects of the review of the application for the covered ~~permit or~~ approval so as to maximize conservation and minimize tree loss.
    - (2) The ~~City Forester~~ Forestry Official may require additional information and /or modifications, approve, approve with conditions, or disapprove the ~~Forest Stand Delineation~~ NRI/FSD and the ~~Conservation Plan~~ FCP.
    - (3) The submission of the ~~Forest Stand Delineation~~ NRI/FSD or ~~Forest Conservation Plan~~ FCP shall not be complete until all information required by this ~~chapter~~ Chapter, the Forest Conservation Manual, and such other information as may be required by the ~~City Forester~~ Forestry Official is received by the ~~City Forester~~ Forestry Official.
    - (4) ~~If the City Forester fails to approve, disapprove, or request additional information and/or modifications to the Forest Stand Delineation within thirty (30) days after its completed submission or resubmission, or the Forest Conservation Plan within forty five (45) days of its completed submission or resubmission, the Forest Stand Delineation or Conservation Plan shall be deemed to be approved.~~ NRI/FSD review.
      - ~~If the Forest Conservation Plan is submitted along with the Forest Stand Delineation, the City Forester shall have forty five (45) days from the approval of the Forest Stand Delineation to review and approve, disapprove or require additional information and/or modifications to the Conservation Plan. The City Forester may extend the review period for an additional fifteen (15) calendar days, or for a longer period if agreed to or requested by the applicant.~~
- a. Within 30 days of receipt of an NRI/FSD, the Forestry Official shall notify the applicant in writing whether the NRI/FSD is complete and approved.
  - b. If the Forestry Official fails to provide the notice required by subsection a., the FCP shall be deemed approved.
  - c. The Forestry Official may provide for a 15-day extension to the 30-day deadline for extenuating circumstances by providing written notice to the applicant.

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d. At the request of the applicant, the Forestry Official may also extend this deadline for extenuating circumstances.

(5) Forest conservation plan review.

a. Within 45 days of receipt of an FCP, the Forestry Official shall notify the applicant in writing whether the forest conservation plan is complete and approved.

b. If the Forestry Official fails to provide the notice required by subsection a., the FCP shall be deemed approved.

c. The City Forester/Forestry Official may provide for a 15-day extension to the 45-day deadline for extenuating circumstances by providing written notice to the applicant.

d. At the request of the applicant, the Forestry Official may also extend this deadline for extenuating circumstances.

e. The Forestry Official must issue written findings and justification as part of the approval of any FCP that includes clearing within a priority retention area.

(6) Notice of clearing within priority retention areas. At least 30 days before approval of a final FCP, the Forestry Official must:

a. Provide mailed notice to all property owners abutting and adjacent to the boundary of the tract of any proposed clearing of a priority retention area; and

b. For a tract with a net area of at least five acres where at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for public written and verbal comment before plan approval; or for any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

(7) The Forestry Official may:

a. Require changes and modifications to the ~~Forest Stand Delineation~~NRI/FSD and/or the ~~Conservation Plan~~FCP as a condition of approval.

b. Approve changes and modifications to the ~~Forest Stand Delineation~~NRI/FSD and/or the ~~Conservation Plan~~FCP if necessitated by changes in the development or in the condition of the ~~site~~tract.

~~(Ord. No. 12-07, 7-16-07)~~

(8) An approved final FCP is valid for five years, except that the Forestry Official may require submission of a revised final FCP if conditions on the tract change within five years of the final FCP approval.

(d) The Forestry Official may revoke an approved final FCP upon finding that:

(1) A provision of the final FCP has been violated;

(2) Approval of the final FCP 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 tract necessitate preparation of a new or amended plan.

(e) Before revoking approval of a forest conservation plan, the Forestry Official shall notify the violator in writing and provide an opportunity for a hearing.

**Secs. 10.5-15—10.5-20. Reserved.**

### **ARTICLE III. RETENTION, TREE REPLACEMENT, AFFORESTATION AND REFORESTATION REQUIREMENTS**

#### **Sec. 10.5-21. Retention.**

- (a) The ~~Forest Conservation Plan~~FCP shall give priority consideration to the retention of existing forest cover and individual significant trees and to minimizing the need for reforestation and tree replacement. ~~Except as otherwise provided herein, existing forest cover and individual trees shall be retained to the break even point. Retention requirements are established as a percentage of a tract's total area in Section 10.5-22(c).~~
- (b) Priority Retention Areas. Except as provided in subsection (c) below, the following trees, shrubs, plants, and specific areas are considered priority for retention and protection and must be retained, protected, and left in an undisturbed condition.
- (1) Trees, shrubs and plants located in certain sensitive areas, such as the ~~one hundred (100)~~ year floodplain, streams and stream buffer areas, steep slopes, nontidal wetlands, and critical habitats;
  - (2) Contiguous ~~forests;~~forest that connects the largest undeveloped or most vegetated portions of land within and adjacent to the tract;
  - (3) Priority forests as described in the State Forest Conservation Technical Manual;
  - (4) Rare, threatened, or endangered species as referred to in COMAR 08.19.03.01 Article VII 7.2C;
  - (5) Trees associated with a historic site or structure;
  - (6) Trees designated as a champion tree;
  - (7) ~~Certain specimen~~Specimen trees or significant trees that are deemed rare, or of exceptional quality or size within the City;
  - (8) Forested stream buffers;~~and~~
  - (9) Forested park buffers~~;~~
  - (10) Forest suitable for forest interior-dwelling species; and
  - (11) Forest that is most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution.
- (c) The ~~City Forester~~Forestry Official may approve clearing within priority retention areas if ~~all of the following conditions have been met to the satisfaction of the City Forester:~~
- ~~(1) Priority forest has been retained to the break even point for forest conservation or it has been demonstrated to the satisfaction of the City Forester~~Forestry Official in accordance with subsection (c)(~~4~~1) of this section that clearing ~~below the break even point~~ is warranted. ~~The break even point shall be calculated using the entire tract area and all existing forest within the tract;~~
  - ~~(2) On sites that do not contain priority forest equal to the break even point, priority trees, as described in subsection (b)(4), (5), (6) and (7) above, have been retained to the afforestation level;~~
  - ~~(3) All afforestation, reforestation and tree replacement requirements are being met on site; and~~



~~(4) —Written(1) —~~ An applicant must provide written justification signed by the applicant ~~has been provided for clearing within priority retention areas or below the break-even point. Said. The applicant's~~ justification must contain the following information:

- a. How clearing within priority retention areas ~~or below the break-even point~~ is required to accommodate one ~~(1)~~ or more of the following:
  - i. Right-of-way dedications.
  - ii. ~~Site access~~ Access to the tract.
  - iii. Utility connections.
  - iv. Other City development standards.
  - v. ~~Site conditions~~ Conditions on the tract and best design practices.
- b. Why the development activity is consistent with the City of Rockville Comprehensive Plan and cannot be altered to preserve priority retention areas. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.
- c. How all techniques for retention have been exhausted.

(d) Non-priority retention areas. On sites tracts where there is insufficient priority retention area to satisfy the ~~forest~~ retention requirements, of the forest conservation threshold in section 10.5-22(c), these requirements shall be satisfied through the retention of non priority areas provided that:

- (1) Priority areas are protected in retention areas;
- (2) A minimum ~~five thousand (5,000)~~ square foot protection zone is specified;
- (3) All critical root zone areas are included in the protection area; and
- (4) The non priority areas provide one ~~(1)~~ or more of the following benefits:
  - a. A vegetative buffer between two ~~(2)~~ different land uses.
  - b. Wildlife habitat.
  - c. Water quality.
  - d. Reduces runoff from erosion.
  - e. Reduces flooding.
  - f. Protects steep slopes.
  - g. Provides areas for recreation and outdoor education activities.

~~(5) —Clearing below the break-even point must be justified in accordance with the requirements of subsection (c)(4) of this section.~~

~~(e) —Priority trees. Written justification signed by the applicant and approved by the City Forester must be provided for removal of all trees listed in subsection (b)(4), (5), (6) and (7) above. Said justification must contain the following information:~~

- ~~(1) —How removal of the priority tree(s) is required to accommodate one (1) of the following:~~
- ~~a. —Right of way.~~
  - ~~b. —Site access.~~
  - ~~c. —Utility connections.~~

d. ~~Other City developmental standards.~~

e. ~~Site conditions and best design practices.~~

(2) ~~Why the development cannot be altered to preserve priority trees. Cost alone, or the desire not to alter the preferred site design shall not be sufficient justification for not altering the development to preserve priority trees.~~

(3) ~~How all techniques for retention have been exhausted.~~

~~(Ord. No. 12-07, 7-16-07; Ord. No. 21-09, 10-12-09)~~

#### Sec. 10.5-22. Tree replacement, reforestation and afforestation.

(a) Tree replacement and reforestation. After all efforts to maximize forest and tree preservation ~~on-site~~onsite, as required in section 10.5-21, have been exhausted, the ~~Forest Conservation Plan~~FCP shall provide for tree replacement, afforestation and reforestation ~~on-site~~onsite as follows:

(1) *Tree replacement.* Individual significant trees removed, whether within the forest or outside the forest, shall be replaced at the following rates with similar species: ~~In the event that adequate space does not exist for similar species, smaller species may be utilized, subject to the Forestry Official's approval.~~

Size of Significant Tree Removed (inches)	Minimum 2½-Inch Caliper Tree Replacement (number of trees)
<del>126—18 d.b.h.</del> <u>DBH.</u>	1
<del>greater than 18</del> <u>19—24 d.b.h.</u> <u>DBH.</u>	2
<del>greater than 24 d.b.h.</del> <u>25—29 DBH.</u>	3
<del>Replacement of a specimen or champion tree shall be at twice the above rate.</del> <u>30 and greater DBH</u>	<u>6</u>

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(2) *Reforestation.* For all existing forest cover measured to the nearest ~~one hundred (100)~~ square feet cleared on the tract area:

a. ~~Reforestation shall be at the rate of one quarter (¼) of the forested area.~~ Forest cover outside of priority retention areas shall be reforested at a ratio of 50 square feet planted for every 100 square feet removed above the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located;

b. Forest cover within or containing priority retention areas shall be reforested at a ratio of 100 square feet planted for every 100 square feet removed above the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located; and

b. ~~Reforestation shall be at the rate of three times the forested area.~~ All forest cover removed below the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located—shall be reforested at a ratio of 300 square feet planted for every 100 square feet removed.

c. ~~(3) Reforestation credit.~~ The Forest Conservation Manual may provide for:

1. ~~A~~ a credit against the area required to be reforested for:

i. ~~a.~~ Forest areas retained above the forest conservation threshold; ~~and~~

- ~~ii~~b. Individual significant trees retained outside of the forest retention areas, where ~~seventy-five (75)~~ percent of the critical root zone is preserved; and
- ~~iii~~c. Street trees planted, not to exceed ~~twenty-five (25)~~ percent of the total reforestation requirement.

(b) Afforestation.

- (1) Afforestation is not required for ~~covered a solar photovoltaic facility or~~ activities conducted:
  - ~~a. On a~~ a tract with an area of less than forty thousand (40,000) sq. ft; ~~or~~
  - ~~b. On an existing single recorded residential lot of any size, provided that the lot is not subdivided and the covered activity does not result in the cutting, clearing, or grading of more than twenty thousand (20,000) square feet of forest.~~
  - ~~c. On a linear project, as defined by the State Forest Conservation Technical Manual, provided that the activity does not result in forest clearing in excess of twenty thousand (20,000) square feet.~~
- (2) Where forest cover on a tract prior to development activity is less than the percentage of coverage established in subsection (c) of this section as the afforestation level for the zone in which the tract is located, the ~~Conservation Plan~~FCP shall provide for the afforestation of the tract to the applicable afforestation level.
- (3) Forest cut or cleared below the required afforestation level, in accordance with section 10.5-21, shall be replaced at a rate of three (3) times the area removed 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.
- (4) The ~~Forest~~ Conservation Manual may provide for:
  - a. A credit against the area required to be afforested for:
    - (i) Individual significant trees retained outside of the forest retention areas, where ~~seventy-five (75)~~ percent of the critical root zone is preserved; and
    - (ii) Street trees planted, not to exceed ~~twenty-five (25)~~ percent of the total afforestation requirement.
  - b. Calculation of afforestation requirements based on less than the tract area where ~~seventy-five (75)~~ percent of a tract area has previously been developed and no more than ~~twenty-five (25)~~ percent of the tract area will be disturbed.
  - c. Calculation of afforestation requirements based on less than the tract area;
    - (i) Where ~~seventy-five (75)~~ percent of a tract area has been previously developed; and
    - (ii) The tract consists of one or more lots or parcels of land under common ownership aggregating at least ~~eighty (80)~~ acres in size; and
    - (iii) No more than ~~fifty (50)~~ percent of the tract area will be disturbed.

(c) ~~Conservation~~Forest conservation thresholds and afforestation levels.

Applicable Zones	<del>Forest</del> Conservation Threshold (percent)	Afforestation Level (percent)
R-400, R-200	30	20
R-90, R-75, R-60, R-150	25	15

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R-40, <del>RMD-INFILL</del> , RMD10, RMD15, RMD25	15	15
I-L, I-H, MXT, MXC, <del>MXCT</del> , MXNC, MXB, MXE, MXCD, MXTD	15	15

For planned developments the thresholds and levels are those applicable to the designated equivalent zone ~~for each planned development~~, as set forth in ~~chapter~~Chapter 25 (~~Zoning Ordinance~~), article 14.

(d) Minimum tree cover.

- (1) Except as otherwise provided in this section, the minimum tree cover to be provided onsite is the same percentage of the tract area as the afforestation level.
- (2) In the MXCD, MXTD and MXNC zones, the minimum tree cover to be provided ~~on-site~~onsite is ~~ten-(10)~~ percent of the tract area.
- (3) In the MXE zone, if at least five-~~(5)~~ percent of the tract area is dedicated in fee simple to the City as useable public parkland, the minimum tree cover to be provided ~~on-site~~onsite is ~~ten-(10)~~ percent of the tract area. Any parcel of land dedicated to the City pursuant to this subsection must be a minimum of ~~twenty thousand (20,000)~~ square feet. It is the Director of Recreation and Park's sole discretion to determine whether to accept the dedication of land and whether land is usable public parkland. Trees planted on the land to be dedicated to the City may count towards the minimum tree cover requirement, but the ~~City Forester~~Forestry Official must approve any such planting.
- (4) For a champion project, as defined ~~in the chapter~~Chapter 25 ~~of the City Code~~, the Mayor and Council, at the time a project plan resolution is approved, may establish the minimum tree cover to be provided ~~on-site~~onsite. The minimum tree cover for a champion project can be established at no less than five ~~(5)~~ percent of the tract area.
- (5) Replacement trees, reforestation, afforestation and existing trees can be used to satisfy tree cover requirements. Tree cover requirements shall be calculated and shown on the ~~Forest Conservation Plan~~FCP.

- (e) The ~~Forest~~ Conservation Manual may provide for implementation of tree replacement, reforestation, and afforestation requirements in stages tied to phased development activity. Tree replacement, reforestation, and afforestation shall be accomplished within one (1) year or two (2) growing seasons after completion of the development project, as specified on the approved ~~Forest Conservation Plan~~FCP.

~~(Ord. No. 12-07, 7-16-07; Ord. No. 10-09, § 3, 3-23-09; Ord. No. 21-09, 10-12-09; Ord. No. 23-15, 8-3-15; Ord. No. 18-18, 10-15-18)~~

- (f) Upon meeting the reforestation and afforestation requirements in this section, all unforested riparian buffers onsite must be afforested and reforested, unless the Forestry Official finds, based on information provided by the applicant, that afforestation or reforestation in the riparian buffer:

- (1) Would be in conflict with allowable uses as established for the riparian buffer;
- (2) Is located on City park property and conflicts with the mission and established stewardship practices of the Department of Recreation and Parks; or
- (3) Is not suitable for the establishment and retention of the required planting materials, in which case the applicant must implement substitute environmental protection measures approved by the Forestry Official.

- (g) A minimum of 80% of all trees planted by or on behalf of an applicant to satisfy the requirements of this section must be native trees. To the extent possible, forest conservation requirements should be met using a diversity of tree species.

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**Sec. 10.5-23. Preferred sequence and priorities for tree replacement, reforestation and afforestation.**

- (a) Tree replacement, reforestation and afforestation, where possible, shall be provided for in the following preferred sequence:
- (1) Selective clearing and supplemental planting ~~on-site~~ onsite;
  - (2) Onsite planting using transplanted or nursery stock that is equal to or greater than one inch caliper;
  - (3) Landscaping of areas ~~on-site~~ onsite under an approved landscaping plan ~~and~~ and
  - ~~(4) Offsite planting using transplanted or nursery stock that is equal to or greater than one inch caliper.~~
- (b) The following are considered a priority for reforestation and afforestation, and are to be employed in the following preferred sequence:
- (1) Establish or enhance stream buffer areas;
  - (2) Establish or enhance forested areas on 100-year floodplains;
  - (3) Establish or increase connections between forested areas;
  - (4) Establish or enhance forest buffers adjacent to critical habitats;
  - (5) Stabilize steep slopes;
  - (6) Increase the overall area of contiguous forest cover;
  - (7) Enhance nontidal wetlands;
  - (8) Use native plant materials;
  - (9) Establish or enhance buffers between differing land uses or adjacent to highways or utility rights-of-way;
  - (10) Establish or enhance forested buffers adjacent to parkland.

~~(Ord. No. 12-07, 7-16-07)~~

**Sec. 10.5-24. Payment in lieu of tree replacement, reforestation and afforestation.**

- (a) If an applicant provides written justification demonstrating that tree replacement, reforestation or afforestation cannot be reasonably accomplished ~~on-site~~ onsite or offsite, the applicant may, with the approval of the ~~City Forester~~ Forestry Official, contribute to the City's Forest Conservation Fund and Park Maintenance Fund an amount in lieu of tree replacement, reforestation or afforestation as set forth in the Forest Conservation Manual. ~~Said~~ The applicant's justification must contain the following information:
- (1) How planting space is limited to accommodate one ~~(1)~~ or more of the following:
    - ~~ia.~~ ia. Right-of-way dedications;
    - ~~ii.~~ ii. ~~Site access;~~
    - ~~iii.b.~~ iii.b. Access to the tract;
    - ~~c.~~ c. Utility connections; or
    - ~~iv.d.~~ iv.d. Other City development standards.

(2) Why the development cannot be altered to provide adequate planting space. Cost, alone, or the desire not to alter preferred site design shall not be sufficient justification for not altering the development to preserve priority retention areas.

(3) How the minimum tree cover requirement, as determined by the afforestation threshold, is being met ~~on-site~~onsite.

(4) How the applicant has been unable to reasonably secure offsite area within the municipal boundaries of the City to accommodate afforestation or reforestation.

(b) The City may use funds from the City Forest Conservation Fund for those purposes authorized by COMAR 08.19.02.02(I). Funds shall not be used to plant or maintain trees on single dwelling unit residential lots.

(c) The City may use the funds from the Park Maintenance Fund for the purposes of installing, maintaining, and replacing trees, shrubbery, and other landscaping on City-~~owned~~ parkland, right-of-way, and other City-owned property. Maintenance may include control and eradication of invasive/exotic plants. Funds shall not be used for the installation, maintenance, or replacement of any hardscape, except to the extent that such hardscape is deemed by the City Forestry Official to be necessary to protect and preserve plant material.

(Ord. No. 12-07, 7-16-07; Ord. No. 24-07, 10-22-07; Ord. No. 10-09, § 3, 3-23-09; Ord. No. 21-09, 10-12-09)

Editor's note(s) — Ord. No. 24-07, adopted October 22, 2007, changed the title of section 10-5-24 from "Payment in lieu of reforestation and afforestation" to "Payment in lieu of tree replacement, reforestation and afforestation."

#### **ARTICLE IV. ~~FOREST CONSERVATION, MAINTENANCE AND MANAGEMENT~~ AGREEMENTS**

##### **Sec. 10-5-25. ~~Short term maintenance~~Maintenance agreements.**

(a) Where significant tree replacement, reforestation, or afforestation is required, the ~~Final Forest Conservation Plan~~final FCP must include a binding five-year maintenance agreement ~~as specified in COMAR 08.19.05.01 and the Forest Conservation Manual~~.

(b) The maintenance agreement shall provide for the maintenance of all trees planted in accordance with an approved ~~Final Forest Conservation Plan to insure~~final FCP to ensure their protection and the satisfactory establishments of forests. The maintenance agreement shall require replacement plantings if survival rates fall below required standards as provided in the ~~State's~~State Forest Conservation Technical Manual and shall provide for access by representatives of the City to the afforested and reforested areas and other areas covered by the maintenance agreement. The maintenance agreement shall require eradication and control of non-native and invasive plants as identified on the City's Non-Native and Invasive Plant List for the duration of the maintenance period.

(c) The applicant shall submit documentary evidence of the applicant's legal right to implement the proposed maintenance agreement.

~~(d) — The~~(d) Upon a biennial inspection during the spring and fall planting seasons, the maintenance period may be extended for additional growing seasons to ensure that:

- (1) Supplemental planting needed to meet forest conservation requirement becomes established;
- (2) Effective exotic and non-native invasive control is completed; and

- (3) All aspects of the ~~Approved Forest Conservation Plan~~approved forest conservation plan have been satisfactorily met.

~~(e) — The (e)~~ Except where the City is the applicant, the maintenance agreement shall be accompanied by a bond issued by a surety company authorized to do business in ~~the state~~Maryland, or an irrevocable letter of credit issued by a financial institution authorized to do business in ~~the state~~Maryland, or such other security satisfactory to the ~~City Manager~~Forestry Official and the City Attorney in an amount equal to the estimated cost of significant tree replacement, afforestation, and reforestation ~~for~~ the amount of the contribution due the City Forest Conservation Fund~~;~~, plus the estimated cost of forest and significant tree protection measures.

- (1) The bond or other security shall run to the Mayor and Council and shall secure that the retention, tree replacement afforestation, reforestation and maintenance agreement are conducted and maintained in accordance with the approved ~~Forest Conservation Plan~~FCP or that the required contributions have been made to the City Forest Conservation Fund.
- (2) The security shall be released upon the determination of the ~~City Forester~~Forestry Official that all requirements of the ~~Forest Conservation Plan~~FCP and the ~~short-term~~ maintenance agreement have been fulfilled. The security may be partially released based on the successful implementation of phases of the ~~Conservation Plan~~FCP, if the maintenance agreement provides for ~~said~~ partial release.
- (3) The security may be subject to forfeiture upon the failure of the applicant to comply with:
- a. An administrative order pertaining to the approved ~~Forest Conservation Plan; FCP; or~~
- b. Any element of the approved ~~Forest Conservation Plan; FCP;~~
- (4) The ~~City Manager~~Forestry Official shall notify the obligee by certified mail, of the intention of the City to seek forfeiture of the security.

~~(Ord. No. 12-07, 7-16-07; Ord. No. 21-09, 10-12-09)~~

#### Sec. 10.5-26. Long term agreement.

- (a) The ~~Final Forest Conservation Plan~~final FCP must include a long-term ~~binding agreement as specified in COMAR 08.19.05.02 and in a form satisfactory to the City Attorney, providing for the preservation and protection of areas retained, afforested, or reforested and significant tree replacements~~protective agreement consistent with an approved ~~Final Forest Conservation Plan~~final FCP in a form approved by the Office of the City Attorney.
- (b) A long-term protective agreement shall contain ~~provisions for enforcement of the agreement~~provisions, including provisions for the collection of attorney's fees incurred in such enforcement action.
- ~~(c) — An, except where the City is the applicant may satisfy the requirement for long-term protective agreement by executing a forest conservation and management agreement, as provided in the Annotated Code of Maryland, Tax Property Article, Section 8-211.~~
- ~~(d) — The long-term agreement shall be accompanied by those legal instruments necessary to effectuate such agreement, such as conservation easements, deed restrictions, covenants and other agreements.~~
- ~~(e)(c)~~ Any final subdivision plat or detailed development plan for the subject tract approved on or after January 1, 1993 shall show the areas ~~held under such~~subject to a long-term protective agreements.

~~(Ord. No. 12-07, 7-16-07)~~

#### Secs. 10.5-27—10.5-30. Reserved.

## ARTICLE V. INDIVIDUAL TREE REMOVAL

### Sec. 10.5-31. Trees in public right-of-way.

Trees within the public-right-of-way are subject to the State's Roadside Tree Law, as ~~currently~~ set forth in the Natural Resources Article ~~of the Annotated Code of Maryland §§ 5-401 through 5-406, and as subsequently amended.~~

~~(Ord. No. 12-07, 7-16-07)~~

### Sec. 10.5-32. Trees on private property.

~~(a) This section does not apply to the removal of any significant tree located on a single-family residential lot that is not otherwise subject to the provisions of this chapter, except that the portion of a public right-of-way abutting a single dwelling unit residential lot is subject to section 10.5-31.~~

~~(b) Except as provided in subsection (b), below, it is unlawful for any person to remove any significant tree on private property, including trees located within utility easements, not otherwise covered by a Forest Conservation Plan or FCP, without first receiving a permit from the City Forester/Forestry Official.~~

~~(b) This section does not apply to the removal of any significant tree located on a lot improved with an existing single dwelling unit, unless such tree is subject to an existing FCP or if such tree is within a public right-of-way and subject to section 10.5-31.~~

(c) The ~~City Forester~~Forestry Official shall issue a permit if one ~~(1)~~ of the following conditions exist:

- (1) The tree is dead or dying, or in danger of falling;
- (2) The tree is diseased, insect infested, or injured and cannot reasonably be restored;
- (3) The tree constitutes a hazard to the safety of persons or threatens injury to property, including other trees.
- (4) Removal of a tree is required for the maintenance of a utility. Unless otherwise prohibited by law, the ~~City Forester~~Forestry Official may require that significant trees removed be replaced in accordance with the tree replacement rates set forth in subsection 10.5-23(a)(1), or that payment be made to the City's Forest Conservation Fund in lieu of significant tree replacement.

(d) If none of the conditions contained in subsection (c) exist, a permit may be issued only upon the condition that the tree removed be replaced in accordance with the tree replacement rates set forth in subsection 10.5-22(a)(1), or that payment be made to the City's Forest Conservation fund in lieu of significant tree replacement, or a combination of tree replacement and fee in lieu payment occurs, pursuant to the Forest Conservation Manual.

~~(Ord. No. 12-07, 7-16-07; Ord. No. 10-09, § 4, 3-23-09)~~

## ARTICLE VI. ENFORCEMENT



### Sec. 10.5-33. Inspections.

- (a) The ~~City Forester and other representatives of the City designated by the City Manager~~Forestry Official may enter property subject to this ~~chapter~~Chapter for the purpose of inspection and enforcement. The timing and frequency of the inspections shall be at the discretion of the ~~inspector~~Forestry Official, except that the following inspections must take place:
- (1) Before any land disturbing activities occur on the tract;
  - (2) Following completion of all land disturbing activities and tree replacement, afforestation or reforestation covered by the ~~Forest Conservation Plan~~FCP; and
  - (3) At the end of the time period covered by the maintenance agreement.
- (b) No land disturbing activity shall commence and no bond or security shall be released until ~~an inspection~~the Forestry Official has ~~been conducted~~an inspection.

~~(Ord. No. 12-07, 7-16-07)~~

### Sec. 10.5-34. Penalties and other remedies.

- (a) Pursuant to Section 6-1612 of the Natural Resources Article ~~of the Annotated Code of Maryland~~, a fine in the amount of ~~one thousand dollars (\$1,000.00)~~ may be imposed for each violation of this ~~chapter~~Chapter, including any violation of an approved ~~Forest Conservation Plan~~FCP, which fine may be recovered in a civil action brought by the City. Each day a violation continues is a separate violation.
- (b) In addition, the City shall have available to it all those remedies set forth in sections 1-9 and 1-11 of this Code.
- (c) In addition to any of the foregoing remedies, the ~~City, through its appropriate commissions, departments, agencies, or other representatives, may~~Forestry Official may, in response to any violation:
- (1) Issue a stop-work order until the violation has been abated, and/or any fine or penalty imposed has been paid, except that a stop work order shall be lifted with respect to any fine or penalty from which an appeal has been filed pursuant to section 10.5-35 of this ~~chapter~~Chapter;
  - (2) Initiate forfeiture proceedings of security posted;
  - (3) Order corrective action to restore or reforest an area;
  - (4) Revoke a covered ~~permit or covered~~ approval issued conditioned on compliance with this ~~chapter~~Chapter. Revocation of any covered ~~permit or~~ approval due to non-compliance with an approved ~~conservation plan~~FCP or any other violation of this ~~chapter~~Chapter shall be conducted in the same manner as a revocation proceedings for other reasons;
  - (5) Assess an administrative penalty in the amount of ~~thirty cents (\$0.30)~~ per square foot of the area found to be in non-compliance with required forest conservation. Payment of such an administrative penalty shall become a condition of the covered ~~permit or~~ approval.
- (d) When practical under the circumstances, the ~~City Forester~~Forestry Official shall issue an administrative notice of violation requiring the violator to take corrective action and/or pay a fine and/or penalty within a certain period of time. The violator shall thereafter be given an opportunity to consult with the ~~City Forester~~Forestry Official prior to any further enforcement action being taken. Service of the administrative notice shall be made on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address. If, after reasonable efforts, service cannot be made in the foregoing manner, it shall be made by posting the administrative notice at the ~~site~~tract which is the subject

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of the covered ~~permit or~~ approval and by regular mail to the violator's last known address. If the violator is different from the applicant for the covered ~~permit or~~ approval, the copy of the administrative notice of violation shall also be served upon said applicant.

(Ord. No. 12-07, 7-16-07)

#### **Sec. 10.5-35. Appeals.**

Any person aggrieved by a final decision of the ~~City Forester~~ Forestry Official pursuant to this ~~chapter~~ Chapter may ~~appeal said decision to the Board of Appeals~~ file a petition for judicial review in the same manner as other decisions of administrative officials are appealed. Any person aggrieved by any decision of the Board of Appeals may appeal the same to the Circuit Court of Montgomery County. Such appeal shall be taken according ~~to~~ accordance with the Maryland Rules ~~as set forth in Title 7, Chapter 200~~ not later than 30 days after the decision is issued.

(Ord. No. 12-07, 7-16-07)