

ORDINANCE NO. _____

ORDINANCE: To Amend Chapter 10.5 of the Rockville City Code, entitled "Forest and Tree Preservation," to Bring the Chapter into Conformance with Current State Law and Make Various Modifications to Improve the Administration of the Chapter

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND that Chapter 10.5 of the Rockville City Code, entitled "Forest and Tree Preservation," be amended as follows:

Chapter 10.5
FOREST AND TREE PRESERVATION

ARTICLE I. – IN GENERAL

Sec. 10.5-1. Purpose.

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

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- (5) Meet the requirements of ~~the Natural Resources Article~~, Sections 5-1601 through 5-1613 of the Natural Resources Article ~~the Annotated Code of Maryland~~.

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.

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.

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- (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.~~

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 a Forest Conservation Manual which shall meet the minimum requirements of the State Forest Conservation Manual and shall include, but not be limited to:~~
 - a. ~~Standards for preparing and evaluating a Forest Stand Delineation;~~
 - b. ~~Standards for preparing and evaluating a Forest Conservation Plan, including priorities for retention, reforestation, and afforestation;~~
 - c. ~~A recommended tree species list;~~
 - d. ~~Forest and tree protective measures to be provided prior, during and after clearing or construction;~~
 - e. ~~Other standards, requirements, and clarifications consistent with this chapter.~~
- (b) *The City Manager.* The City Manager, ~~through the City Forester and other authorized designees~~ shall:
- (1) Designate a Forestry Official to interpret and administer the provisions of this Chapter ~~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 section 5-1613 of the Natural Resources Article ~~Annotated Code of Maryland.;~~

- (3) Promulgate and keep current a Forest Conservation Manual which meets the minimum requirements of the State Forest Conservation Technical Manual and includes:
- a. Standards for preparing and evaluating an NRI/FSD;
 - b. Standards for preparing and evaluating a 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 before, during, and after clearing or construction; and
 - f. Other standards, requirements, and clarifications consistent with this Chapter.

~~Develop procedures and policies necessary to administer this chapter.~~

- (4) Execute maintenance agreements pursuant to this Chapter on behalf of the Mayor 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~~ Forestry Official shall:

- (1) Review and approve or disapprove ~~Natural Resources Inventory/Forest Stand Delineations~~ NRI/FSDs, and Forest Conservation Plans ~~forest conservation plans, tree save plans,~~ and other submissions, as provided for by this ~~chapter~~ Chapter;
- (2) Interpret and apply the standards of ~~the~~ this Chapter and the Forest Conservation Manual;

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- (4) Inspect ~~development activity properties~~ to determine compliance with approved forest conservation plans and the provisions of this ~~chapter~~ Chapter;
- (5) Issue tree removal permits in accordance with section 10.5-32; and

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Sec. 10.5-5. Definitions.

For purposes of this ~~chapter~~ Chapter ~~and the Conservation Manual~~, 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.

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

~~*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.~~

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

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Chapter means a chapter of the Rockville City Code.

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City Manager means the person appointed by the Mayor and Council of Rockville to serve as the City Manager pursuant to Article VI of the City Charter.

COMAR means the Code of Maryland Regulations

Conservation Manual 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 the following activities occurring in connection with a tract within the City:

- (1) — Subdivision of land;
- (2) — An activity that requires a grading and sediment control permit;
- (3) — An activity that requires a site plan or a project plan, or a site plan or project plan amendment;

Covered approval means approval of a sediment control permit, a subdivision plan (preliminary or final), a site plan, a project plan, or an amendment thereto to any of the foregoing, 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:

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- (3) Constitutes a habitat of the species which is considered critical under Natural Resources Article, §§ sections 4-2A-04 and 10-2A-04, of the Natural Resources Article Annotated Code of Maryland.

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

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:

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- (2) An agreement to comply with the provisions of this ~~chapter~~ Chapter at such time as any additional development occurs on the property; and

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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 ~~g~~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, means a contiguous stand of trees that is at least 5,000 square feet in size exhibiting at least one transect of at least 50 feet in width, including areas that have been cut but not converted to other land uses.

(1) ~~"Forest" means a contiguous biological community dominated by trees and other woody plants covering a land area of five thousand (5,000) square feet or greater.~~

(2) ~~"Forest" includes:~~

a. ~~Areas that have 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 at four and one-half (4½) feet above the ground and larger; and~~

b. ~~Areas that have been cut but not cleared.~~

(3) ~~"Forest" does not include orchards.~~

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~~*Forest 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 manual adopted by resolution of the Mayor and Council detailed document 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.~~

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~~*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.~~

~~*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.~~

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 an agreement between an applicant and the City that details how the areas designated for afforestation, reforestation, 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. ~~short-term management agreement, for a minimum of five (5) years, relating to afforestation or reforestation plans required under Natural Resources Article, § 5-1605, Annotated Code of Maryland and this chapter.~~

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

Natural Resources Article means the Natural Resources Article of the Maryland Annotated Code.

~~*Natural Resources Inventory (NRI)* means a complete analysis of existing natural features, forest, and tree cover on site as further defined and described in the Environmental Guidelines.~~

Natural Resources Inventory/Forest Stand Delineation or NRI/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 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:

- (1)a- 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
- (2)b- 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 ~~Natural Resources Article, Title 9, of the Natural Resources Article Annotated Code of Maryland.~~

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

~~*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 stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event ~~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.~~

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

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Planned development means ~~a development~~ development activity located in a planned development zone as set forth in Chapter chapter 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.~~

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Qualified Professional-preparer means an individual qualified to prepare an Natural Resources Inventory/Forest Stand Delineation NRI/FSD and an 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, as may be amended.

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.~~

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 protection holding and protecting 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 the limits of disturbance or within twenty-five 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 dwelling unit by special exception. This term does not include any common area owned by a homeowner's association or similar entity.~~

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.

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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 a subdivision of land as defined in Chapter 25, except that subdivision the division of a lot, tract or parcel 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 does not include the creation of ownership lots as that term is defined in eChapter 25 (Zoning Ordinance).~~

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.

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

Sec. 10.5-11. General requirements.

- (a) Except as provided in subsection (b) of this section, an applicant must submit an NRI/FSD and a forest conservation plan ~~otherwise provided this chapter or in the Conservation Manual, a person filing an application for a covered permit or approval shall submit a Forest Stand Delineation and a Forest Conservation Plan as part of, or in connection with, the application a covered approval.~~

- (b) An applicant is exempt from the requirements of subsection (a) for the following activities—Exceptions. The submissions referenced in subsection (a) are not required:
- (1) Where an application for permit or approval is filed by the owner of a single dwelling unit residential lot in connection with construction or land disturbing activity not involving subdivision of the lot and where less than twenty thousand (20,000) square feet of forest is disturbed. Any activity conducted on one lot improved or proposed by an applicant to be improved with a single dwelling unit, provided that:
- a. The activity does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest;
- b. The activity will not 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 where the activity is proposed.
- (2) Where a Final Forest Conservation Plan—final forest conservation plan was has been 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. 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 Professional Preparer ~~as defined in section 10.5-5 of this chapter.~~
 - (d) No application for a covered ~~permit or~~ approval is complete until the submissions required by this ~~eChapter~~ are accepted as complete by the ~~City Forester~~ Forestry Official. The ~~City Forester~~ Forestry Official may accept submissions substantially consistent with the purpose of this ~~eChapter~~ and ~~the Natural Resources Article, 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 an ~~Forest Conservation Plan~~ FCP.

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 an Forest Conservation Plan-FCP.

- (b) ~~A Forest Stand Delineation shall~~ An NRI/FSD must contain the following information:
- (1) A completed application form supplied by the City and signed by the applicant, the property owner, and the Qualified Professional~~preparer~~.
 - (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;
 - (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. 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;

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 - c. Steep slopes of ~~twenty-five (25)~~ percent or more;

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 - g. Hydric soils, erodible soils on slopes of ~~fifteen (15)~~ percent or more, and soils with structural limitations as classified by USDA soil surveys;

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 - 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~~ NRI/FSD.
- (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.~~
- (d) The ~~City Forester~~ Forestry Official may accept a ~~Forest Stand Delineation~~ NRI/FSD that ~~substantially~~ 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 ~~(1)~~ 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 regulations change within five years of the original approval.

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

- (a) ~~An Forest Conservation Plan (Conservation Plan)~~ 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 ~~a~~ 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 submitted submit a preliminary FCP in connection with:
 - * * *
 - c. Any other situation where the Forestry Official ~~City Forester~~ deems appropriate.
 - (2) Requirements. ~~A Preliminary Forest Conservation Plan shall~~ A preliminary FCP must contain the following information:
 - a. The approved ~~Forest Stand Delineation~~ NRI/FSD for the ~~site~~ tract drawn to scale;
 - * * *
 - f. Written justification for the proposed use and location of non-priority retention areas and of ~~on-site~~ onsite and ~~off-site~~ offsite 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~~ the final FCP may not divide any forested area existing on the tract.
 - (3) Requirements. A ~~Final Conservation Plan~~ shall final FCP must contain ~~all of the~~ following information:
 - a. All of the information required in subsection (c) and in the Forest Conservation Manual for a ~~Preliminary Conservation Plan~~ preliminary FCP.

* * *

 - 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 Forestry Official ~~City Forester~~ may require submission of a revised FCP Forest Conservation Plan if tract site conditions change within five years of the FCP Forest Conservation Plan approval.

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) NRI/FSD review.

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

~~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.~~

~~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.~~

(5) ~~The City Forester may:~~

- a. ~~Require changes and modifications to the Forest Stand Delineation and/or the Conservation Plan as a condition of approval.~~
- b. ~~Approve changes and modifications to the Forest Stand Delineation and/or the Conservation Plan if necessitated by changes in the development or in the condition of the site.~~

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 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 NRI/FSD and/or the FCP as a condition of approval.

- b. Approve changes and modifications to the NRI/FSD and/or the FCP if necessitated by changes in the development or in the condition of the tract.
- (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.

* * *

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. Retention requirements are established as a percentage of a tract's total area in Section 10.5-22(c). ~~Except as otherwise provided herein, existing forest cover and individual trees shall be retained to the break-even point.~~
- (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;

* * *

- (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 it has been demonstrated to the satisfaction of the Forestry Official in accordance with subsection (c)(1) of this section that clearing is warranted. ~~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 in accordance with subsection (c)(4) 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) ~~An applicant must provide written~~ 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:

* * *

- ii. ~~Site access~~ Access to the tract.

* * *

- 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.

* * *

- (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:

* * *

- (2) A minimum ~~five thousand~~ (5,000) square foot protection zone is specified;

* * *

- (4) The non priority areas provide one ~~(1)~~ or more of the following benefits:

- a. A vegetative buffer between two ~~(2)~~ different land uses.

* * *

- ~~(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.~~

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)
126 —18 d.b.h. <u>DBH</u>	1
greater than 18-19 —24 d.b.h. <u>DBH</u>	2
Greater than 24-25-29 d.b.h. <u>DBH</u>	3
Replacement of a specimen or champion tree shall be at twice the above rate. 30 and greater <u>DBH</u>	<u>6</u>

Replacement of a specimen or champion tree shall be at twice the above rate.

- (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 (1/4) of the forested area removed above the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located; and~~
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. ~~Reforestation shall be at the rate of three times the forested area removed below the forest conservation threshold established in subsection (c) of this section for the zone in which the tract is located.~~
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
 - c. 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 a
- 1. ~~—~~A credit against the area required to be reforested for:
 - ia. Forested areas retained above the forest conservation threshold;
~~and~~
 - iib. Individual significant trees retained outside of the forest retention areas, where ~~seventy-five~~ (75) percent of the critical root zone is preserved; and
 - iiic. 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 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.

* * *

- (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	<u>Forest</u> Conservation Threshold (percent)	Afforestation Level (percent)
R-400, R-200	30	20
R-90, R-75, R-60, R-150	25	15
R-40, RMD-INFILL, RMD-10, RMD-15, RMD-25	15	15
I-L, I-H, MXT, MXC, <u>MXCT</u> , 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.

* * *

- (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.
- (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.

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;

* * *

(3) Landscaping of areas ~~on-site~~ onsite under an approved landscaping plan; and;

(4) Offsite planting using transplanted or nursery stock that is equal to or greater than one inch caliper.

* * *

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:

ai. Right-of-way dedications;

bii. ~~Site access~~ Access to the tract;

ciii. Utility connections; or

d.iv. Other City development standards.

(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.

* * *

- (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.

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~~ final FCP to ~~insure~~ 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.

* * *

- (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:

* * *

- (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) 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 ~~(or 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.

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

- (a) The ~~Final Forest Conservation Plan~~ final FCP must include a long-term ~~binding protective~~ 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 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, except where the City is the applicant.
- (c) ~~An 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) ~~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.~~

* * *

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.~~

Sec. 10.5-32. Trees on private property.

- (a) 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 an FCP, without first receiving a permit from the 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. 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) 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, without first receiving a permit from the City Forester.~~
- (c) The ~~City Forester~~ Forestry Official shall issue a permit if one ~~(1)~~ of the following conditions exist:

* * *

- (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.

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:

* * *

- (2) Following completion of all land disturbing activities and tree replacement, afforestation or reforestation covered by the ~~Forest Conservation Plan~~ FCP; and

* * *

- (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.

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.

* * *

- (c) In addition to any of the foregoing remedies, the ~~City, through its appropriate commissions, departments, agencies, or other representatives,~~ 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;

* * *

- (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 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.

Sec. 10.5-35. Appeals.

Any person aggrieved by a final decision of ~~the City Forester~~ Forestry Official ~~the 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.

- NOTE: ~~Strikethrough~~ indicates material deleted.
- Underlining indicates material added.
- Asterisks * * * indicate material unchanged by this ordinance.

I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council of Rockville at its meeting of _____.

Sara Taylor-Ferrell
City Clerk/Director of Council Operation

