

Forest Conservation — Program Amendments to Conform with State Law

For the purpose of amending Chapter 21.71 (Forest Conservation) of the Code of the City of Annapolis to add and update definitions; to add afforestation requirements, exemptions for linear projects and solar photovoltaic facilities, and public notice and comment procedures for the clearing of priority retention areas; to expand reforestation mitigation options; to update forest conservation fund contribution requirements; to amend forest mitigation bank credit provisions to authorize the use of qualified conservation; and generally dealing with Chapter 21.71 of the City Code.

City Council of the
City of Annapolis

Ordinance 16-26

Introduced by: Alderman Savidge
Co-sponsored by:

Referred to:

- Environmental Matters Committee
- Rules and City Government Committee

AN ORDINANCE concerning

Forest Conservation — Program Changes to Conform with State Law

FOR the purpose of amending Chapter 21.71 (Forest Conservation) of the Code of the City of Annapolis to add and update definitions; to add afforestation requirements, exemptions for linear projects and solar photovoltaic facilities, and public notice and comment procedures for the clearing of priority retention areas; to expand reforestation mitigation options; to update forest conservation fund contribution requirements; to amend forest mitigation bank credit provisions to authorize the use of qualified conservation; and generally dealing with Chapter 21.71 of the City Code.

BY repealing and reenacting with amendments the following portions of the Code of the City of Annapolis, 2026 Edition:

- Section 21.71.010 — Purpose and general provisions
- Section 21.71.020 — Forest and tree conservation definitions
- Section 21.71.030 — Application
- Section 21.71.070 — Forest conservation plan
- Section 21.71.080 — Afforestation and retention
- Section 21.71.090 — Reforestation

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- Section 21.71.100 — Priorities and time requirements for afforestation and reforestation
- Section 21.71.110 — Payment instead of afforestation and reforestation
- Section 21.71.120 — Payment by credits from a forest mitigation bank
- Section 21.71.130 — Establishing forest mitigation banks
- Section 21.71.190 — Annual report

WHEREAS, On May 8, 2023, Governor Moore signed Senate Bill 526, titled "Natural Resources – Forest Preservation and Retention," into law, changing Maryland's Forest Conservation Act, with the aim of enhancing afforestation and reforestation requirements and allowing local jurisdictions to adopt alternative regulations, provided they receive approval from the Department of Natural Resources; and

WHEREAS, Those changes take effect July 1, 2026, and while the state has yet to release its model ordinance advising Maryland communities on how to change their local afforestation laws, the City Council has decided to move ahead on updating its local forest conservation program under Chapter 21.71 so that the City's program remains approved, advances its goal to expand the City's tree canopy to 50% by 2050 as established in the Annapolis Ahead 2040 Comprehensive Plan.

WHEREAS, Natural Resources Article, § 5-1606(d) of the Annotated Code of Maryland, authorizes a local jurisdiction to adopt forest conservation thresholds and afforestation and reforestation requirements more stringent than the State minimums; and whereas Senate Bill 526 replaced the State's land use category threshold rules with a flat reforestation ratio, the City elects to retain its more protective threshold-based program, under which one acre is planted for each acre removed above the applicable threshold and two acres are planted for each acre removed below the threshold, as a more effective way to achieve the State's policy goal of increasing forest and tree canopy acreage. Therefore,

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

City Code Title 21 – PLANNING AND ZONING
Division V – Regulations of General Applicability
Chapter 21.71 – Forest Conservation

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Section 21.71.010 Purpose and general provisions.

~~The City Council has determined that to meet the requirements of Natural Resources Article, §§ 5-1601—5-1612, Annotated Code of Maryland, the provisions of this chapter must be enacted to protect forests and environmentally sensitive areas in the City.~~

A. The City Council has determined that the City shall develop a forest conservation program consistent with the intent, requirements, and standards of Natural Resources Article, §§ 5-1601—5-1612, Annotated Code of Maryland, and affording due consideration to the policy goals established under:

1. State Finance and Procurement Article, § 5-7A-01, Annotated Code of Maryland; and
2. Title 3 of the Land Use Article, Annotated Code of Maryland.

B. Consistent with the policy of the State under Natural Resources Article, § 5-102(b), Annotated Code of Maryland, it is the policy of the City of Annapolis to encourage the retention and sustainable management of forest land by:

1. Increasing, as measured every four years, the acreage of forest land within the City; and
2. Increasing, as measured every four years, the acreage of land within the City covered by tree canopy, both inside and outside areas of urban development.

C. This chapter shall be administered and interpreted consistent with the policy stated in Subsection A and with the City's tree canopy goals as adopted in the Annapolis Ahead 2040 Comprehensive Plan (Environmental Sustainability Goal ES2).

Section 21.71.020 Forest and tree conservation definitions.

[Revisor's Note: *Only those definitions added or amended by this ordinance are set out below. For all other definitions applicable to this Chapter, see § 21.71.020 as previously enacted. New definitions are inserted into this section in alphabetical order upon codification.***]**

For the purposes of this chapter only, the following terms have the meanings indicated:

"Degraded Forest" means a forest ecosystem that has lost its natural structure, function, and/or diversity due to human activity or other disturbances, leading to diminished capacity to regenerate.

"Forest Land" means a contiguous patch of trees that is at least one acre in size, exhibiting at least one transect of at least 120 feet in width. Forest land includes forest areas that have been cut but not converted to other land uses.

"Planted Green Infrastructure" means the implementation of natural systems in the man-made environment to imitate or replicate natural forest processes.

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“Qualified conservation” means the conservation of all or part of an existing forest that:

1. Has been approved by the Department for the purpose of establishing a forest mitigation bank; and
2. Is encumbered in perpetuity by a restrictive easement, covenant, or another similar mechanism recorded in the land records of Anne Arundel County to conserve its character as a forest.

“Tree canopy” means the crowns of deciduous and evergreen woody vegetation that is:

1. The product of natural growth or human planting; and
2. Greater than three meters in height.

Section 21.71.030 Application.

B. This chapter does not apply to:

1. Highway construction activities under Natural Resources Article, § 5-103, Annotated Code of Maryland;
2. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, §§ 8-1801—8-1817, Annotated Code of Maryland, including those areas into which critical area forest protection measures have been extended under Natural Resources Article, § 5-1602(c), Annotated Code of Maryland;
3. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, § 8-211, Annotated Code of Maryland, that are completed:
 - i. Before July 1, 1991; or
 - ii. After July 1, 1991, on property which:
 - a. Has not been the subject of application for a grading permit for development within five years after the logging or harvesting operation, and
 - b. Is the subject of a declaration of intent as provided for in Subsection C. ~~of this section~~, approved by the Department;
4. Agricultural activities ~~that do not result in a change in land use category, including the operation of orchards and tree farms, and the construction and use of agricultural support buildings and other related structures built using accepted best management practices. not resulting in a change in land use category, including agricultural support building and other related structures built using~~

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accepted best management practices, except that a person engaging in an agricultural activity clearing forty thousand square feet or greater of forest within a one-year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in Subsection C. of this section which includes:

i. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five years from the date of the declaration; and

ii. A sketch of the property which shows the areas to be cleared;

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

The cutting or clearing of public utility rights-of-way for electric generating stations licensed pursuant to Public Utilities Article § 7-204, § 7-205, § 7-207, or and § 7-208 of the Annotated Code of Maryland, provided that:

i. ~~R~~Any required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, § 5-1603(f), Annotated Code of Maryland; and

ii. ~~E~~Any cutting or clearing of the forest is conducted to minimize the loss of forest;

[paragraphs 6 through 16 are unchanged]

17. Forest management;

18. Transit-oriented development as defined under Transportation Article § 7-101 of the Annotated Maryland Code, provided that the area of forest removed shall be:

a. Reforested at a ratio of at least ¼ acre replanted for each acre removed; or

b. Mitigated in a manner in which ½ acre of forest is permanently protected for each acre removed.

19. The construction of multifamily housing, consisting of a single structure containing at least 25 dwelling units, provided that the area of forest removed shall be:

a. Reforested at a ratio of at least ¼ acre replanted for each acre removed; or

b. Mitigated in a manner in which ½ acre of forest is permanently protected for each acre removed.

[No changes to Subsection C]

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Section 21.71.070 Forest conservation plan.

A. General Provisions.

~~1. A preliminary forest conservation plan cannot be appealed. A final forest conservation plan is appealable as part of the appeal of a final administrative decision, Planning Commission decision or Board of Appeals decision specified in Chapter 21.08. A stay pending appeal shall be imposed during the time allowed to file an appeal, and if an appeal has been filed, for sixty days thereafter.~~

~~2. a. With regard to:~~

~~i. A plan of subdivision or a grading or sediment control plan that was administratively approved; or~~

~~ii. Planned development that has obtained final planned development approval, prior to September 26, 2016, the disposition of which remains governed by former section 17.09.025.b. of the city code;~~

~~Any person aggrieved by a decision of the Director to approve or disapprove the forest conservation plan associated with such applications shall be entitled to note an appeal, and said project shall halt work on any forest clearing until the Building Board of Appeals resolves the appeal.~~

~~b. Any party to the proceeding before the Building Board of Appeals aggrieved of the decision of the Building Board shall be entitled to file a petition for judicial review of the decision of the Building Board in the Circuit Court for Anne Arundel County. The Department may require any forest clearing to be halted until the judicial review has been completed.~~

1. Appeals and Approvals.

i. Preliminary Forest Conservation Plan. A preliminary forest conservation plan cannot be appealed.

ii. Final Forest Conservation Plan.

a. The Department's approval, approval with conditions, or disapproval of a final forest conservation plan under Subsection C is a final decision of the Department.

b. A person aggrieved by the Department's decision on a final forest conservation plan shall be entitled to note an appeal to the Building Board of Appeals not later than 30 days after the Department issues its written decision.

c. In deciding the appeal, the Building Board of Appeals shall consider the record compiled by the Department and may receive additional evidence offered by any party, including evidence that information relied upon by the Department was incomplete or in

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error. The record compiled by the Department, together with any additional evidence received by the Building Board of Appeals, constitutes the record of the Department for purposes of judicial review under Natural Resources Article, § 5-1605(d), Annotated Code of Maryland.

- d. A party to the proceeding before the Building Board of Appeals who is aggrieved by its decision shall be entitled to file a petition for judicial review in the Circuit Court for Anne Arundel County in accordance with the Maryland Rules, not later than 30 days after the Building Board of Appeals issues its decision. Judicial review shall be conducted in accordance with the Maryland Rules and limited to the record described in § 21.71.070(A)(1)(ii)(c).

2. Stays.

- a. No cutting, clearing, or grading of forest subject to the forest conservation plan may occur during the 30 days allowed to note an appeal to the Building Board of Appeals, and, if an appeal is noted, until the Building Board of Appeals resolves the appeal.
- b. After the Building Board of Appeals issues its decision, the Department may require any forest clearing subject to the forest conservation plan to be halted during the time allowed to file a petition for judicial review and until the judicial review has been completed.
- c. The noting of an appeal to the Building Board of Appeals or the filing of a petition for judicial review does not stay the review, processing, or approval of any associated subdivision, project plan, grading permit, or sediment control application.
- d. Final action on an associated application shall be conditioned on the forest conservation plan as approved by the Department or as modified on appeal or judicial review.

[No changes to Subsection A, paragraphs 3-8 or Subsection B]

C. Final Forest Conservation Plan.

[No changes to Subsection C, paragraphs 1-2]

3. Time for Notification.

- ~~i. Within forty five calendar days after incorporation of the prospective final forest conservation plan into a complete plan or permit application associated with a regulated activity, the dDepartment shall notify the applicant in writing whether the forest conservation plan is complete and acceptable.~~

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- ~~ii. If the decision making authority fails to notify the applicant within forty-five calendar days, the plan shall be treated as complete and approved.~~
 - ~~iii. The decision making authority may require further information or extend the deadline for an additional fifteen calendar days under extenuating circumstances in its own discretion.~~
 - ~~iv. At the request of the applicant, the decision making authority may extend the deadline under extenuating circumstances.~~
 - ~~v. The Department shall post the notifications described in this section and the final forest conservation plan on their website.~~
- ~~4. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.~~
- ~~5. The Department may revoke an approved forest conservation plan if it finds that:~~
 - ~~i. A provision of the plan has been violated;~~
 - ~~ii. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, omission of a relevant or material factor;~~
 - ~~iii. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or~~
 - ~~iv. The project plan approval is terminated due to the applicant's inaction as specified in Title 17 of the City Code.~~
- ~~6. The Department may issue a stop work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.~~
- ~~7. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing before the Department Director or designee.~~
- ~~8. Upon approval of the final forest conservation plan the Department shall post the plan on the Department's website within three business days.~~
 - i. Notice and comment before approval. For any final forest conservation plan that proposes the clearing of a priority retention area, the Department shall provide the notice and opportunity for comment required under § 21.71.080(C)(2) before approving the plan.
 - ii. Within 45 calendar days after receipt of the final forest conservation plan, the Department shall notify the applicant in writing whether the forest conservation plan is complete.
 - a. If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.

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- b. The Department may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances in its own discretion.
- c. At the request of the applicant, the Department may extend the deadline under extenuating circumstances.
- d. The Department shall post the notifications described in this section and the final forest conservation plan on the City's website.

2. Approval.

- i. The Department shall approve, approve with conditions, or disapprove the final forest conservation plan in a written decision.
- ii. The written decision shall include the findings required under § 21.71.080(C) where clearing of a priority retention area is proposed, and the findings required under § 21.71.110 where payment instead of afforestation or reforestation is proposed.
- iii. The Department's written decision, or the deemed approval under the completeness provision of this subsection, constitutes the approval of the forest conservation plan for purposes of Natural Resources Article, § 5-1605(d), Annotated Code of Maryland.

3. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project, except that the Department shall issue its written decision under this subsection before the Planning Commission or other decision-making authority takes final action on the associated application.

4. The Department may revoke an approved forest conservation plan if it finds that:

- i. A provision of the plan has been violated;
- ii. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material factor;
- iii. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or
- iv. The project plan approval is terminated due to the applicant's inaction as specified in Title 17.

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

6. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing before the Department Director or their designee.

7. Upon approval of the final forest conservation plan, the Department shall post the plan on the Department's website within three business days.

[This is the end of § 21.71.070.]

Section 21.71.080 Afforestation and retention.

A. Afforestation Requirement. A person submitting an application after the effective date of this chapter for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of forty thousand square feet or greater, shall:

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

i. A tract having less than twenty percent of the net tract area in forest cover shall be afforested up to at least twenty percent of the net tract area for the following land use categories:

a. Agriculture and resource areas, and

b. Medium density residential areas;

ii. A tract with less than ~~twenty percent~~20% of its net tract area in forest cover shall be afforested up to at least ~~twenty percent~~20% of the net tract area for the following land use categories:

a. Institutional development areas,

b. High density residential areas,

c. Mixed use and planned unit development areas, and

d. Commercial and industrial use areas;

iii. The afforestation requirements under this subsection shall be accomplished within two years or three growing seasons after the completion of the development project.

iv. Afforestation requirements under this subsection shall conform to the conditions in Natural Resources Article, §§ 5-1607 and 5-1610, Annotated Code of Maryland, including payment into the City's Forest Conservation Fund if afforestation on site or off site cannot reasonably be accomplished.

v. Linear projects that involve no change in land use category may not be subject to afforestation requirements.

vi. Solar photovoltaic facilities may not be subject to afforestation requirements under this chapter.

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vii. All unforested stream buffers shall be afforested or reforested, unless the applicant demonstrates to the Department, and the Department finds, that afforestation in the riparian buffer:

a. Would be in conflict with the allowable uses as established for the riparian buffer;

b. Is located on public park property and conflicts with the mission and established stewardship practices of the park; or

c. Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures shall be implemented.

2. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Subsection A.4-~~A(1)~~ of this section:

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

ii. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a two-to-one ratio 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.

B. Retention.

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

i. Trees, shrubs, and plants located in sensitive areas, including the 100-year floodplain, intermittent ~~and perennial~~ streams and their buffers of at least 50 feet from the stream channel, perennial streams and their buffers of at least 100 feet from the stream channel, coastal bays and their buffers, steep slopes and their buffers, nontidal wetlands, and critical habitats.

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

iii. Forests in urban areas.

a. As delineated in the priority urban forest mapping included in the Annapolis Forest Conservation Technical Manual or the most recently adopted Annapolis Comprehensive Plan; or

b. That are most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution.

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2. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that the applicant qualifies for a variance in accordance with ~~Section~~§ 21.71.170 of this chapter:
- i. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - a. The Federal Endangered Species Act of 1973 in 16 U.S.C. §§ 1531—1544 and in 50 C.F.R. 17,
 - b. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2a-01—10-2a-09, Annotated Code of Maryland, and
 - c. COMAR 08.03.08;
 - ii. Trees that:
 - a. Are part of a site designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis,
 - b. Are associated with a structure designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis, or
 - c. Have been designated by the State, County, or the Department as a National, State, County or Municipality champion tree; and
 - iii. Any tree:
 - a. Having a DBH of ~~thirty~~30 inches or more, or
 - b. Which has been designated as a significant tree pursuant to this chapter.

C. Retention Clearing Justification.

1. The Department shall issue written findings and justification for any clearing of a priority retention area as described in § 21.71.080 (B)

2. Notice and Public Comment.

- i. At least 20 days before approval of a Forest Conservation Plan, the Department shall:
 - a. Provide notice that is consistent with Department notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in § 21.71.080(B); and
 - b. On a net tract area of at least five acres where at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval; or

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- c. For any other project where a priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.
- ii. The Department shall issue the notice required under this paragraph not later than 15 days after receipt of a final forest conservation plan that proposes clearing of a priority retention area, so that the comment opportunity concludes within the review period.
- iii. Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent for purposes of the notice required under this paragraph.
3. Any final determination made under this section is subject to appeal and judicial review in accordance with § 21.71.070(A).

Section 21.71.090 Reforestation.

A. Forest Conservation Threshold.

1. There is a forest conservation threshold established for all land use categories, as provided in Subsection ~~A.2.A(2) of this section~~. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of one acre planted for each acre removed above the threshold to a ratio of two acres planted for each acre removed below the threshold.
2. After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, purchase of credits from a forest mitigation bank, or payment into the forest conservation fund, according to the formula set forth below and in Subsection ~~A.3.A(3) of this section~~ and consistent with ~~Section~~ § 21.71.070.A. of this chapter, and the following forest conservation thresholds for the applicable land use category:

Category of Use	Threshold Percentage
(1) Agricultural and Resource Areas	50 percent
(2) Medium Density Residential Areas	25 percent
(3) Institutional Development Areas	20 percent
(4) High Density Residential Areas	20 percent
(5) Mixed Use and Planned Unit Development Areas	20 percent
(6) Commercial and Industrial Use Areas	20 percent

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3. Calculations.

i. For all existing forest cover measured to the nearest one-tenth acre cleared on the net tract area above the applicable forest conservation threshold, the area of the forest removed shall be reforested at a ratio of one acre planted for each acre removed.

ii. For all existing forest cover measured to the nearest one-tenth acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold.

B. Upon meeting the reforestation requirements of this section, all unforested stream buffers on the site shall be afforested or reforested in accordance with the conditions and exceptions set forth in § 21.71.080(A)(1).

Section 21.71.100 Priorities and time requirements for afforestation and reforestation.

A. Sequence for Afforestation and Reforestation.

1. After techniques for retaining existing forest on the site have been exhausted, afforestation and reforestation shall be accomplished on-site before off-site where a reasonable on-site alternative exists, using the following methods in the preferred sequence determined by the Department:

i. Forest creation in accordance with a forest conservation plan using one or more of the following:

a. Transplanted or nursery stock,

b. Whip or seedling stock, or

c. Natural regeneration where it can be adequately shown to meet the objective of the Forest Conservation Technical Manual;

ii. ~~In a municipal corporation with a tree management plan and in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department, the use of~~ Within the City, provided the City has adopted a tree management plan, or in any other area approved by the Department as part of the City's local program, the use of:

a. The planting of Sstreet trees as a permissible step in the priority sequence for afforestation or reforestation ~~and~~ with a mature

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canopy coverage may be granted full credit as a mitigation technique, and

- b. Acquisition of an offsite protection easement on existing forested areas within the City boundaries not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed fifty percent of the area of forest cover protected;

c. The restoration of on- or off-site degraded forest within the City of Annapolis, including soil enhancements without grading, the removal of invasive species, wildlife control, the improvement of understory, and new tree plantings, as appropriate, in which case the afforestation or reforestation credit granted shall not exceed 50% of the area of forest restored; and

d. The establishment of planted green infrastructure or planted environmental site design practices beyond the amount required under Environment Article § 4-203 of the Annotated Maryland Code may grant full credit as a mitigation technique.

- iii. When all other options, both onsite and offsite, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest of the equivalent area of the removed forest requiring mitigation, but at least ~~thirty-five~~³⁵ feet wide and covering at least ~~two thousand five hundred~~^{2,500} square feet of area.

2. A sequence other than the one described in Subsection A-1 ~~of this article~~^{A(1)} may be used for a specific project, if necessary, to achieve the objectives of the City Land Use Plan or City Land Use Policies, or to take advantage of opportunities to consolidate forest conservation efforts, ~~as long as there is still no net loss of forest within the City limits.~~^{in a manner consistent with the purposes of this chapter.}

Section 21.71.110 Payment instead of afforestation and reforestation.

A. Forest Conservation Fund.

1. There is established a forest conservation fund.
2. If a person subject to this chapter demonstrates to the satisfaction of the Department that requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money into the City forest conservation fund:
 - i. For a project inside a priority funding area, as defined in Natural Resources Article, § 5-1610, Annotated Code of Maryland, at a rate per square foot of the area of required planting to be set by resolution of the

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City Council sufficient to provide for site identification, acquisition, preparation, ongoing maintenance costs and overhead, and

- ii. For a project outside a priority funding area, at a rate ~~twenty percent~~ 20% higher than the rate established for a project inside a priority funding area.

iii. The amount of the contribution shall be set by resolution of the City Council in the annual Fees Schedule.

3. Before accepting payment under this section, the Department shall issue written findings, supported by documentation provided by the applicant, demonstrating that the priority mitigation techniques in § 21.71.100 cannot reasonably be accomplished on-site or off-site.

4. Money contributed instead of afforestation or reforestation under this chapter shall be paid prior to the issuance of a grading permit.

5. The City shall accomplish the afforestation or reforestation for which the money is deposited within ~~two~~ five years or ~~three~~ six growing seasons, whichever is a greater time period, after receipt of the money.

[The following portions of this Section remain unchanged.]

Section 21.71.120 Payment by credits from a forest mitigation bank.

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

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

C. The use of qualified conservation completed in a forest mitigation bank may be used to meet:

- i. Up to 50% of the afforestation or reforestation requirement, in which case, the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity; or
- ii. If the City proposes, and after public comment, the Maryland Department of Natural Resources approves a written justification for the increase, up to 60% of the afforestation or reforestation requirement, in which case the afforestation or reforestation credit granted may not exceed 50% of the forest area encumbered in perpetuity.

D. After December 31, 2020, forest mitigation banks may be allowed only:

- i. If the application was submitted before December 31, 2020, or

Explanation Note:

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Underlining & black means copyediting or reformatting of existing Code section

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ii. When using:

a. Qualified conservation located in priority retention areas as identified in § 21.71.080(B); or

b. Newly planted forest located in priority afforestation or reforestation areas identified under § 21.71.100, or in a comprehensive plan adopted by the City.

Section 21.71.130 Establishing forest mitigation banks.

A. Upon approval by the Department, a person may create a forest mitigation bank from which applicants may purchase credits to meet the afforestation and reforestation requirements of this chapter.

B. The forest mitigation bank shall:

1. ~~Afforest or reforest~~, reforest, or utilize qualified conservation in an area of land in accordance with a forest mitigation bank agreement;

[The following portions of this Section remain unchanged.]

SECTION II: AND BE IT FINALLY ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this ordinance shall take effect upon passage.

Explanation Note:

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