

1 **..Title**  
2 **Forest Conservation Reforestation** – For the purpose of prohibiting certain development  
3 projects from cutting or clearing certain forests within the City of Annapolis unless the applicant  
4 offsets that loss with newly planted acreage; and providing for an appeal process.

5 **..Body**

6 **CITY COUNCIL OF THE**  
7 **City of Annapolis**

8 **Ordinance 38-16**

9 **Introduced by: Alderman Littmann and Alderman Arnett**

- 10  
11  
12  
13 **Referred to:**  
14 **Economic Matters Committee**  
15 **Environmental Matters Committee**  
16 **Rules and City Government Committee**  
17 **Planning Commission**  
18 **Environmental Commission**

19  
20 **AN ORDINANCE concerning**

21 **Forest Conservation Reforestation**

22  
23  
24 **FOR** the purpose of prohibiting certain development projects from cutting or clearing certain  
25 forests within the City of Annapolis unless the applicant offsets that loss with newly  
26 planted acreage; and providing for an appeal process.

27  
28 **BY** repealing and re-enacting with amendments the following portions of the Code of the  
29 City of Annapolis, 2015 Edition:

- 30  
31 Section 21.71.070  
32 Section 21.71.090  
33

34  
35 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**  
36 **COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

37  
38 **Chapter 21.71 – FOREST CONSERVATION**

39  
40 **Section 21.71.070 – Forest Conservation Plan.**

41  
42 A. General Provisions.  
43

- 1 1. A preliminary forest conservation plan cannot be appealed. A final forest conservation  
2 plan is appealable as part of the appeal of a final administrative decision, planning  
3 commission decision or board of appeals decision specified in chapter 21.08. A Stay  
4 pending appeal shall be imposed during the time allowed to file an appeal, and if an  
5 appeal has been filed, for sixty (60) days thereafter.  
6
- 7 2. WITH REGARD TO (1) A PLAN OF SUBDIVISION OR A GRADING OR  
8 SEDIMENT CONTROL PLAN THAT WAS ADMINISTRATIVELY APPROVED, OR  
9 (2) A PLANNED DEVELOPMENT THAT HAS OBTAINED FINAL PLANNED  
10 DEVELOPMENT APPROVAL, PRIOR TO SEPTEMBER 26, 2016, THE  
11 DISPOSITION OF WHICH REMAIN GOVERNED BY FORMER SECTION  
12 17.09.025B OF THE CITY CODE, ANY PERSON AGGRIEVED BY A DECISION OF  
13 THE DIRECTOR TO APPROVE OR DISAPPROVE THE FOREST CONSERVATION  
14 PLAN ASSOCIATED WITH SUCH APPLICATIONS SHALL BE ENTITLED TO  
15 NOTE AN APPEAL TO THE BUILDING BOARD OF APPEALS. ANY PARTY TO  
16 THE PROCEEDING BEFORE THE BUILDING BOARD OF APPEALS AGGRIEVED  
17 OF THE DECISION OF THE BUILDING BOARD OF APPEALS SHALL BE  
18 ENTITLED TO FILE A PETITION FOR JUDICIAL REVIEW OF THE DECISION OF  
19 THE BUILDING BOARD OF APPEALS IN THE CIRCUIT COURT FOR ANNE  
20 ARUNDEL COUNTY.  
21
- 22 3. The city shall use best efforts to provide weekly electronic mail updates to interested and  
23 registered users, if applicable, of newly filed or updated FCA documents and notices that  
24 are required under this chapter.  
25
- 26 24. In developing a forest conservation plan, the applicant shall give priority to techniques  
27 for retaining existing forest on the site. There is a rebuttable presumption that priority  
28 retention areas shall be retained. The presumption can only be rebutted under the criteria  
29 specified in Section 21.71.080(B) of this Act.  
30
- 31 35. If existing forest on the site subject to a forest conservation plan cannot be retained, the  
32 applicant shall demonstrate to the satisfaction of the department:  
33
  - 34 i. How techniques for forest retention have been exhausted;
  - 35
  - 36 ii. Why the priority forests and priority areas specified in Natural Resources Article, §5-  
37 1607(c)(1), Annotated Code of Maryland, cannot be left in an undisturbed condition:  
38
    - 39 a. If priority forests and priority areas cannot be left undisturbed, how the  
40 sequence for afforestation or reforestation will be followed in compliance with  
41 Natural Resources Article, §5-1607, Annotated Code of Maryland;

- 1           b. Where on the site in priority areas afforestation or reforestation will occur in  
2           compliance with Natural Resources Article, §5-1607, Annotated Code of  
3           Maryland; and  
4
- 5           iii. How the disturbance to the priority forests and priority areas specified in Natural  
6           Resources Article, §5-1607(c)(2), Annotated Code of Maryland, qualifies for a  
7           variance.  
8
- 9   46.   The applicant shall demonstrate to the satisfaction of the department that the  
10       requirements for afforestation or reforestation onsite or offsite cannot be reasonably  
11       accomplished if the applicant proposes to make a payment into the forest conservation  
12       fund or to purchase credits from a forest mitigation bank.  
13
- 14   57.   Nontidal wetlands. A regulated activity within the net tract area that occurs wholly or  
15       partly in areas regulated as nontidal wetlands under Environment Article, Title 9,  
16       Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory  
17       requirements and the requirements of this chapter, subject to the following:  
18
- 19       i.   Any area of forest in the net tract area, including forest in nontidal wetlands that is  
20       retained, shall be counted towards forest conservation requirements under this  
21       chapter;  
22
- 23       ii.   For the purpose of calculating reforestation mitigation under this section, a forested  
24       nontidal wetland permitted to be cut or cleared and required to be mitigated under  
25       Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the  
26       forest conservation plan and subtracted on an acre-for-acre basis from the total  
27       amount of forest to be cut or cleared as part of a regulated activity;  
28
- 29       iii.   Nontidal wetlands shall be considered to be priority areas for retention and  
30       replacement;  
31
- 32       iv.   Forested nontidal wetland identification and delineation should be included at the  
33       earliest stage of planning to assist the applicant in avoidance and reduction of impacts  
34       to the nontidal wetlands and to avoid delay in the approval process.  
35
- 36   68.   An approved forest conservation plan is valid for five years.  
37
- 38   B.   Preliminary forest conservation plan.  
39
- 40   1.   A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed  
41       landscape architect, or a qualified professional who meets the requirements stated in  
42       Comar 08.19.06.01a.  
43

- 1 2. The preliminary forest conservation plan shall:
  - 2
  - 3 i. Be submitted with the proposed development plan;
  - 4
  - 5 ii. Include the approved forest stand delineation for the site;
  - 6
  - 7 iii. Include a table that lists the proposed values of the following, in square feet:
    - 8
    - 9 a. Net tract area,
    - 10 b. Area of forest conservation required, and
    - 11 c. Area of forest conservation that the applicant proposes to provide, including both
    - 12 onsite and offsite area;
    - 13
    - 14 iv. Include a clear graphic indication of the forest conservation provided on the site
    - 15 drawn to the same scale as the project plan scale, showing areas where retention
    - 16 of existing forest or afforestation or reforestation is proposed;
    - 17
    - 18 v. Include an explanation of how the provisions of subsection (a) of this section have
    - 19 been met;
    - 20
    - 21 vi. In the case of afforestation or reforestation, include a proposed afforestation or
    - 22 reforestation plan;
    - 23
    - 24 vii. Include a proposed construction timetable showing the sequence of forest
    - 25 conservation procedures;
    - 26
    - 27 viii. Show the proposed limits of disturbance;
    - 28
    - 29 ix. Show proposed stockpile areas;
    - 30
    - 31 x. Incorporate a proposed five year maintenance agreement that shows how areas
    - 32 designated for afforestation or reforestation will be maintained to ensure
    - 33 protection and satisfactory establishment; and
    - 34
    - 35 xi. Other information the department determines is necessary to implement this
    - 36 chapter.
    - 37
- 38 3. The review of the preliminary forest conservation plan shall be concurrent with the
- 39 review of the preliminary site plan.
- 40
- 41 4. The department shall post the preliminary forest conservation plan on their website for at
- 42 least fifteen calendar days and provide directions as to how the public may send or

1 deliver written comments, testimony, or documentation pertaining to the preliminary  
2 forest conservation plan.  
3

- 4 5. The department shall hold a public meeting at which the department shall describe the  
5 approval process and the applicant shall make a presentation indicating the contents of  
6 the proposed preliminary forest conservation plan and the proposed site design plan. The  
7 general public may participate in the discussion of the application. The meeting shall be  
8 recorded and the recording shall be retained until such time as the appellate period tolls  
9 and made publicly available. In the event there are significant modifications to the  
10 preliminary forest conservation plan, the department may require an additional public  
11 meeting if it determines such a meeting would serve the public interest.  
12
- 13 6. During different stages of the review process, the preliminary forest conservation plan  
14 may be modified, provided the department approves of the changes. All significant  
15 modifications must be posted for public review and comment.  
16
- 17 7. All correspondence material to an application shall be posted on the department website.  
18 Comments received shall be made part of the application record.  
19

20 C. Final forest conservation plan.  
21

- 22 1. A final forest conservation plan shall be prepared by a licensed forester, a licensed  
23 landscape architect, or a qualified professional who meets the requirements stated in  
24 Comar 08.19.06.01a.  
25
- 26 2. A final forest conservation plan shall:  
27
- 28 i. Be submitted by the applicant consistent with requirements established by the  
29 department and the law with the following:  
30
- 31 a. A final subdivision plan,  
32 b. A final project plan,  
33 c. An application for a grading permit, or  
34 d. An application for a sediment control permit;  
35
- 36 ii. Show proposed locations and types of protective devices to be used during construction  
37 activities to protect trees and forests designated for conservation;  
38
- 39 iii. In the case of afforestation or reforestation, include an afforestation or reforestation  
40 plan, with a timetable and description of needed site and soil preparation, species, size,  
41 and spacing to be used;  
42

- 1 iv. Incorporate justification for any proposed disturbance of priority retention areas,  
2 including reasons why such priority retention areas cannot be retained and how the  
3 applicant shall replace proposed disturbed priority retention areas through afforestation  
4 and reforestation, in compliance with the requirements of this chapter.  
5
- 6 v. Incorporate a binding five year maintenance agreement specified in Comar 08.19.05.01  
7 that details how the areas designated for afforestation or reforestation will be  
8 maintained to ensure protection and satisfactory establishment, including:  
9
  - 10 a. Watering, and
  - 11 b. A reinforcement planting provision if survival rates fall below required  
12 standards, as provided in the forest conservation technical manual;
- 13
- 14 vi. Incorporate a long-term binding protective agreement as specified in Comar  
15 08.19.05.02 that:  
16
  - 17 a. Provides protection for areas of forest conservation, including areas of  
18 afforestation, reforestation, and retention; and
  - 19 b. Limits uses in areas of forest conservation to those uses that are designated and  
20 consistent with forest conservation, including recreational activities and forest  
21 management practices that are used to preserve forest;
- 22
- 23 vii. Include a statement of how the project will impact the city's tree canopy goals;
- 24
- 25 viii. Include the substantive elements required under subsection (b)(2)(ii)-(v), (vii)-(ix), and  
26 (xi) of this section, as finalized elements of the forest conservation plan; and  
27
- 28 ix. Include other information the department determines is necessary to implement this  
29 chapter.  
30
- 31 3. Time for notification.  
32
  - 33 i. Within forty-five calendar days after incorporation of the prospective final forest  
34 conservation plan into a complete plan or permit application associated with a regulated  
35 activity, the decision making authority for such plans shall notify the applicant in  
36 writing whether the forest conservation plan is complete and acceptable.  
37
  - 38 ii. If the decision making authority fails to notify the applicant within forty-five calendar  
39 days, the plan shall be treated as complete and approved.  
40
  - 41 iii. The decision making authority may require further information or extend the deadline  
42 for an additional fifteen calendar days under extenuating circumstances in its own  
43 discretion.

- 1
- 2 iv. At the request of the applicant, the decision making authority may extend the deadline
- 3 under extenuating circumstances.
- 4
- 5 v. The Department shall post the notifications described in this section and the final forest
- 6 conservation plan on their website.
- 7
- 8 4. The department's review of a final forest conservation plan shall be concurrent with the
- 9 review of the final subdivision or project plan, grading permit application, or sediment
- 10 control application associated with the project.
- 11
- 12 5. The department may revoke an approved forest conservation plan if it finds that:
- 13
- 14 i. A provision of the plan has been violated;
- 15
- 16 ii. Approval of the plan was obtained through fraud, misrepresentation, a false or
- 17 misleading statement, omission of a relevant or material factor;
- 18
- 19 iii. Changes in the development or in the condition of the site necessitate preparation of a
- 20 new or amended plan; or
- 21
- 22 iv. The project plan approval is terminated due to the applicant's inaction as specified in
- 23 Title 17 of the City Code.
- 24
- 25 6. The department may issue a stop work order against a person who violates a provision of
- 26 this chapter or a regulation, order, approved forest conservation plan, or maintenance
- 27 agreement.
- 28
- 29 7. Before revoking approval of a forest conservation plan, the department shall notify the
- 30 violator in writing and provide an opportunity for a hearing before the department
- 31 director or designee.
- 32

33 Upon approval of the final forest conservation plan the department shall post the plan on the  
34 department's website within three business days.

35  
36 **Section 21.71.090 – Reforestation.**

37  
38 A. Forest Conservation Threshold.

- 39
- 40 1. There is a forest conservation threshold established for all land use categories, as
- 41 provided in subsection (a)(2) of this section. The forest conservation threshold means the
- 42 percentage of the net tract area at which the reforestation requirement changes from a

ratio of ~~1/4~~ 1 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) of this section~~ SUBSECTION (A)(1) 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	15 percent
(6) commercial and industrial use areas	15 percent

3. ~~Calculations:~~

- ~~i. For all existing forest cover measured to the nearest 1/10<sup>th</sup> acre cleared on the net tract area above the applicable forest conservation threshold, the area of the forest removed shall be reforested at a ratio of 1/4 acre planted for each acre removed.~~
- ~~ii. Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under (3)(i) of this subsection. The calculation of the credit shall be according to the criteria provided in the forest conservation technical manual.~~
- ~~iii. For all existing forest cover measured to the nearest 1/10<sup>th</sup> acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold.~~

**SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

**EXPLANATION**



1  
2  
3  
4  
5

CAPITAL LETTERS indicate matter added to existing law.  
~~Strikethrough~~ indicates matter stricken from existing law.  
Underlining indicates amendments.