

1 **Forest Conservation — Program Amendments to Conform with State Law**

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

9
10
11 **City Council of the
City of Annapolis**

12
13 **Ordinance 16-26**

14 **Introduced by: Alderman Savidge**
15 **Co-sponsored by:**

16
17
18
19 **Referred to:**

- 20 • Planning Commission
21 • Rules and City Government Committee
22

23 **AN ORDINANCE** concerning

24 **Forest Conservation — Program Changes to Conform with State Law**

25
26 **FOR** the purpose of amending Chapter 21.71 (Forest Conservation) of the Code of the City of
27 Annapolis to add and update definitions; to add afforestation requirements, exemptions
28 for linear projects and solar photovoltaic facilities, and public notice and comment
29 procedures for the clearing of priority retention areas; to expand reforestation mitigation
30 options; to update forest conservation fund contribution requirements; to amend forest
31 mitigation bank credit provisions to authorize the use of qualified conservation; and
32 generally dealing with Chapter 21.71 of the City Code.

33
34 **BY** repealing and reenacting with amendments the following portions of the Code of the City
35 of Annapolis, 2026 Edition:

- 36 • Section 21.71.010 — Purpose and general provisions
37 • Section 21.71.020 — Forest and tree conservation definitions
38 • Section 21.71.030 — Application
39 • Section 21.71.070 — Forest conservation plan
40 • Section 21.71.080 — Afforestation and retention
41 • Section 21.71.090 — Reforestation

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- 1 • Section 21.71.100 — Priorities and time requirements for afforestation and
- 2 reforestation
- 3 • Section 21.71.110 — Payment instead of afforestation and reforestation
- 4 • Section 21.71.120 — Payment by credits from a forest mitigation bank
- 5 • Section 21.71.130 — Establishing forest mitigation banks
- 6 • Section 21.71.190 — Annual report
- 7

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

14 **WHEREAS,** Those changes take effect July 1, 2026, and while the state has yet to release its
15 model ordinance advising Maryland communities on how to change their local
16 afforestation laws, the City Council has decided to move ahead on updating its
17 local forest conservation program under Chapter 21.71 so that the City's program
18 remains approved, advances its goal to expand the City's tree canopy to 50% by
19 2050 as established in the Annapolis Ahead 2040 Comprehensive Plan.

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

29
30 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
31 **COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

32 **City Code Title 21 – PLANNING AND ZONING**
33 **Division V – Regulations of General Applicability**
34 **Chapter 21.71 – Forest Conservation**
35

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1 **Section 21.71.010 Purpose and general provisions.**

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

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

9 1. State Finance and Procurement Article, § 5-7A-01, Annotated Code of Maryland;
10 and

11 2. Title 3 of the Land Use Article, Annotated Code of Maryland.

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

15 1. Increasing, as measured every four years, the acreage of forest land within the
16 City; and

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

19 C. This chapter shall be administered and interpreted consistent with the policy stated in
20 Subsection A and with the City’s tree canopy goals as adopted in the Annapolis Ahead
21 2040 Comprehensive Plan (Environmental Sustainability Goal ES2).

22
23 **Section 21.71.020 Forest and tree conservation definitions.**

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

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

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

31
32 “Forest Land” means a contiguous patch of trees that is at least one acre in size, exhibiting at
33 least one transect of at least 120 feet in width. Forest land includes forest areas that have been
34 cut but not converted to other land uses.

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

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1
2 “Qualified conservation” means the conservation of all or part of an existing forest that:

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

8
9 “Tree canopy” means the crowns of deciduous and evergreen woody vegetation that is:

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

12
13 **Section 21.71.030 Application.**

14 B. This chapter does not apply to:

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

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

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

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

10 5. ~~The cutting or clearing of public utility rights-of-way licensed under Public~~
11 ~~Utilities Article, §§ 7-207 and 7-208 or 7-205, Annotated Code of Maryland, or~~
12 ~~land for electric generating stations licensed under Public Utilities Article, §§ 7-~~
13 ~~207 and 7-208 or 7-205, Annotated Code of Maryland, if:~~

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

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

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

22 *[paragraphs 6 through 16 are unchanged]*

23 17. Forest management;

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

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

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

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

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

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

35 *[No changes to Subsection C]*

36

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1 **Section 21.71.070 Forest conservation plan.**

2 A. General Provisions.

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

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

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

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

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

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

23 1. Appeals and Approvals.

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

26 ii. Final Forest Conservation Plan.

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

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

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

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

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

13 2. Stays.

14 a. No cutting, clearing, or grading of forest subject to the forest
15 conservation plan may occur during the 30 days allowed to note an
16 appeal to the Building Board of Appeals, and, if an appeal is noted,
17 until the Building Board of Appeals resolves the appeal.

18 b. After the Building Board of Appeals issues its decision, the
19 Department may require any forest clearing subject to the forest
20 conservation plan to be halted during the time allowed to file a
21 petition for judicial review and until the judicial review has been
22 completed.

23 c. The noting of an appeal to the Building Board of Appeals or the
24 filing of a petition for judicial review does not stay the review,
25 processing, or approval of any associated subdivision, project plan,
26 grading permit, or sediment control application.

27 d. Final action on an associated application shall be conditioned on
28 the forest conservation plan as approved by the Department or as
29 modified on appeal or judicial review.

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

31 C. Final Forest Conservation Plan.

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

33 3. Time for Notification.

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

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

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

6 [This is the end of § 21.71.070.]
7

8 **Section 21.71.080 Afforestation and retention.**

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

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

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

16 a. Agriculture and resource areas, and

17 b. Medium density residential areas;

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

21 a. Institutional development areas,

22 b. High density residential areas,

23 c. Mixed use and planned unit development areas, and

24 d. Commercial and industrial use areas;

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

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

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

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

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

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

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

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

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

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

15 ii. Forest cut or cleared below the required afforestation level shall be
16 reforested or afforested at a two-to-one ratio and added to the amount of
17 afforestation necessary to reach the minimum required afforestation level,
18 as determined by the amount of forest existing before cutting or clearing
19 began.

20 B. Retention.

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

25 i. Trees, shrubs, and plants located in sensitive areas, including the 100-year
26 floodplain, ~~intermittent and perennial~~ streams and their buffers of at least
27 50 feet from the stream channel, perennial streams and their buffers of at
28 least 100 feet from the stream channel, coastal bays and their buffers,
29 steep slopes and their buffers, nontidal wetlands, and critical habitats.

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

32 iii. Forests in urban areas.

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

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

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1 2. The following trees, shrubs, plants, and specific areas are considered priority for retention
2 and protection and shall be left in an undisturbed condition unless the applicant has
3 demonstrated, to the satisfaction of the Department, that the applicant qualifies for a
4 variance in accordance with ~~Section~~ § 21.71.170 of this chapter:

5 i. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:

6 a. The Federal Endangered Species Act of 1973 in 16 U.S.C. §§ 1531—1544
7 and in 50 C.F.R. 17,

8 b. The Maryland Nongame and Endangered Species Conservation Act,
9 Natural Resources Article, §§ 10-2a-01—10-2a-09, Annotated Code of
10 Maryland, and

11 c. COMAR 08.03.08;

12 ii. Trees that:

13 a. Are part of a site designated as historic by the Maryland Historic Trust, the
14 National Park Service, or the City of Annapolis,

15 b. Are associated with a structure designated as historic by the Maryland
16 Historic Trust, the National Park Service, or the City of Annapolis, or

17 c. Have been designated by the State, County, or the Department as a
18 National, State, County or Municipality champion tree; and

19 iii. Any tree:

20 a. Having a DBH of ~~thirty~~ 30 inches or more, or

21 b. Which has been designated as a significant tree pursuant to this chapter.

22 C. Retention Clearing Justification.

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

25 2. Notice and Public Comment.

26 i. At least 20 days before approval of a Forest Conservation Plan, the
27 Department shall:

28 a. Provide notice that is consistent with Department notice
29 requirements to all property owners abutting and adjacent to the
30 boundary of the subject property of any proposed clearing of a
31 priority retention area as described in § 21.71.080(B); and

32 b. On a net tract area of at least five acres where at least 75% of the
33 priority retention area is proposed to be cleared, provide an
34 opportunity for written and verbal comment before plan approval;
35 or

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- 1 canopy coverage may be granted full credit as a mitigation
2 technique, and
- 3 b. Acquisition of an offsite protection easement on existing forested
4 areas within the City boundaries not currently protected in
5 perpetuity as a mitigation technique, in which case the
6 afforestation or reforestation credit granted may not exceed fifty
7 percent of the area of forest cover protected;
- 8 c. The restoration of on- or off-site degraded forest within the City of
9 Annapolis, including soil enhancements without grading, the
10 removal of invasive species, wildlife control, the improvement of
11 understory, and new tree plantings, as appropriate, in which case
12 the afforestation or reforestation credit granted shall not exceed
13 50% of the area of forest restored; and
- 14 d. The establishment of planted green infrastructure or planted
15 environmental site design practices beyond the amount required
16 under Environment Article § 4-203 of the Annotated Maryland
17 Code may grant full credit as a mitigation technique.
- 18 iii. When all other options, both onsite and offsite, have been exhausted, landscaping
19 as a mitigation technique conducted under an approved landscaping plan that
20 establishes a forest of the equivalent area of the removed forest requiring
21 mitigation, but at least ~~thirty-five~~³⁵ feet wide and covering at least ~~two thousand~~
22 ~~five hundred~~^{2,500} square feet of area.
- 23 2. A sequence other than the one described in Subsection ~~A.1.A(1)~~^{A(1)} of this article may be
24 used for a specific project, if necessary, to achieve the objectives of the City Land Use
25 Plan or City Land Use Policies, or to take advantage of opportunities to consolidate
26 forest conservation efforts, ~~as long as there is still no net loss of forest within the City~~
27 ~~limits.~~ in a manner consistent with the purposes of this chapter.

28

29 **Section 21.71.110 Payment instead of afforestation and reforestation.**

30 A. Forest Conservation Fund.

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

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

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

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

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

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

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

16 *[The following portions of this Section remain unchanged.]*
17

18 **Section 21.71.120 Payment by credits from a forest mitigation bank.**

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

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

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

27 i. Up to 50% of the afforestation or reforestation requirement, in which case, the
28 afforestation or reforestation credit granted may not exceed 50% of the forest area
29 encumbered in perpetuity; or

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

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

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

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