

ARTICLE 7
Forest Conservation Ordinance
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ARTICLE 7
Forest Conservation Ordinance

A. General Provisions.

1. Title.

This Article shall be known as the Forest Conservation Ordinance of the City of Hagerstown.

2. Definitions.

Article 3 of the Land Management Code shall govern all definitions as they apply to this Article.

3. Application, Exemption, Declaration of Intent and Consideration of Non-City Forest Conservation Plans Affecting Lands Within City Jurisdiction.

Except as provided in Subsection A.3.b of this Article, this Article applies to:

a. **Application.** A regulated activity as defined in Article 3 of this Code.

b. **Exemptions.** This Article does not apply to:

- (1) Highway construction activities under Natural Resources Article, Section 5-103, Annotated Code of Maryland.
- (2) 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:
 - (a) before July 1, 1991; or
 - (b) after July 1, 1991, on property which:
 - (i) has not been the subject of application for a grading permit for development within five (5) years after the logging or harvesting operation, and
 - (ii) is the subject of a declaration of intent as provided for in Subsection A.3.c of this Article, approved by the Planning and Code Administration Department.
- (3) Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, except that a person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a one- (1-) year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in Subsection A.3.c of this Article which includes:

- (a) a statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five (5) years from the date of the declaration; and
 - (b) a sketch map of the property which shows the area to be cleared.
- (4) The cutting or clearing of public utility rights-of-way licensed under Sections 1-101 and 2-101, et seq. Of the Public Utilities Companies Article of the Annotated Code of Maryland if:
- (a) required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
 - (b) cutting or clearing of the forest is conducted to minimize the loss of forest.
- (5) Routine maintenance or emergency repairs of public utility rights-of-way licensed under Sections 1-101 and 2-101, et seq. of the Public Utilities Companies Article of the Annotated Code of Maryland
- (6) Except for a public utility subject to Subsection A.3.b.6 of this Article, routine maintenance or emergency repairs of a public utility right-of-way if:
- (a) the right-of-way existed before the effective date of this ordinance; or
 - (b) the right-of-way's initial construction was approved under this ordinance.
- (7) Residential construction activity that is constructed on a single lot of any size or a linear project if the activity:
- (a) does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of forest;
 - (b) does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this ordinance; and
 - (c) is the subject of a declaration of intent filed with the Planning and Code Administration Department, as provided for in Subsection A.3.c of this Article, stating that the lot will not be the subject of a regulated activity within five (5) years of the cutting, clearing, or grading of forest.
- (8) Strip or deep mining of coal regulated under Natural Resources Article, Title 7, Subtitle 5 or 5A, Annotated Code of Maryland.
- (9) Non-coal surface mining regulated under Natural Resources Article, Title 7, Subtitle 6A, Annotated Code of Maryland.
- (10) An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child of the owner, if the activity:

- (a) does not result in the cutting, clearing, or grading of more than 40,000 square feet of forest; and
 - (b) is the subject of a declaration of intent filed with the Planning and Code Administration Department, as provided for in Subsection A.3.c of this Article, which states that transfer of ownership may result in a loss of exemption.
- (11) A preliminary plan of subdivision or a grading or sediment control plan approved before July 1, 1991.
- (12) A planned unit development that, by December 31, 1991, has:
- (a) met all requirements for planned unit development approval; and
 - (b) obtained initial development plan approval by the City of Hagerstown.
- (13) A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:
- (a) the transfer does not involve a change in land use, or new development or redevelopment, with associated land disturbing activities; and
 - (b) both the grantor and grantee file a declaration of intent, as provided for in Subsection A.3.c of this Article.
- (14) An activity on a previously developed area covered by impervious surface and located in the Priority Funding Area.
- (15) A stream restoration project, as described in Article 3 of this Land Management Code, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least five (5) years with the affected property owner or owners, or
- (16) Maintenance or retrofitting of a storm water 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 the disturbance for construction of the existing structure, or within any maintenance easement for access to the structure.
- c. **Declaration of Intent.**
- (1) The purpose of the declaration of intent is to verify that the proposed activity is exempt under this Article.
 - (2) A person seeking an exemption under Subsections 2, 3, 7, 10, or 13 of Subsection A.3.b above, shall file a declaration of intent with the Planning and Code Administration Department.
 - (3) The existence of a declaration of intent does not preclude:

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- (a) an exempted activity on the property subject to a declaration of intent, if the activity:
 - (i) does not conflict with the purpose of any existing declaration of intent, and
 - (ii) complies with the applicable requirements for an exempted activity;
 - (b) a regulated activity on the area covered by the declaration of intent, if the activity occurs within five (5) years of the effective date of the declaration of intent, in which case:
 - (i) there shall be an immediate loss of exemption, or
 - (ii) there may be a noncompliance action taken by the Planning and Code Administration Department, as appropriate, under this Article; or
 - (c) a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Article are satisfied.
- (4) The Planning and Code Administration Department may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
 - (a) meet the retention, afforestation and reforestation requirements established in this Article;
 - (b) pay a noncompliance fee of \$0.50 per square foot of forest cut or cleared under the declaration of intent;
 - (c) be subject to other enforcement actions appropriate under this Article; or
 - (d) file a declaration of intent with the Planning and Code Administration Department.
 - (5) In its determination of appropriate enforcement action, the Planning and Code Administration Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Article.
 - (6) The declaration of intent is effective for five (5) years from date of Planning Commission approval and shall be recorded immediately among the land records of Washington County.
- d. **Consideration of Non-City Forest Conservation Plans affecting Lands Within City Jurisdiction.**
- (1) When a development that is outside of the City is proposed to include dedication of lands within the corporate limits of the City of Hagerstown for forest conservation retention or reforestation, the plan shall be submitted to the Hagerstown Planning Commission for review and approval. The Planning Commission may reject the proposal if it finds that the proposal will interfere with the logical development of the balance of the property or surrounding lands, will not be the highest and best use of land, will be inconsistent with the policies and goals of the Hagerstown Comprehensive Plan, or it will remove from potential

development lands the City views as valuable for economic development purposes. The Planning Commission may solicit the comments and opinions of adjacent property owners, the Department of Community and Economic Development and any other agency or organization the Commission identifies as having potential pertinent views on the proposal. Should the Commission approve such a plan, it may impose conditions necessary to protect the public interest from the City's perspective.

- (2) Should the County or State propose a public works project that will impact a property that is subject to a City-approved forest conservation plan, the new plan shall be submitted to the Hagerstown Planning Commission for review and approval. The plan shall contain proposals to offset any forest conservation measures lost by the proposal. Should the Planning Commission approve the proposal, the forest conservation plan file for the subject property shall be updated to reflect the approved change.

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B. General Requirements.

1. **General.** A person making application after the effective date of this Article, for a regulated activity shall:
 - a. Submit to the Planning and Code Administration Department a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and
 - b. Use methods approved by the City of Hagerstown, as provided in the City of Hagerstown Forest Conservation Technical Manual, to protect retained forests and trees during construction.
2. **Government Agency or Funding.** If a local agency or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D-G apply.
 - a. The plans for the regulated activity shall be submitted to the Planning and Code Administration Department; and
 - b. The Planning and Code Administration Department shall notify the Department of Natural Resources within 15 days of receipt of this plan or application.
 - c. Within 15 days of receipt of notice from the local authority, the Department of Natural Resources shall:
 - (1) determine whether the regulated activity has impact on significant forest resources; and
 - (2) notify the local authority whether the regulated activity is subject to the state program.
 - d. If the Department of Natural Resources determines that the regulated activity is subject to the state program, the:
 - (1) time limit for approval of the forest stand delineation and preliminary and final forest conservation plans shall begin when the Department of Natural Resources receives the necessary documents from the local authority; and
 - (2) local authority may not approve a regulated activity until the local authority receives notice from the Department of Natural Resources that the standards and requirements of the state program have been satisfied.
 - e. If the Department of Natural Resources determines the regulated activity need not be reviewed under the state program, the time limit from approval of the forest stand delineation and forest conservation plan under the local program begins when the local authority receives notice from the Department of Natural Resources.

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C. Forest Stand Delineation.

1. Criteria.

- a. **When Submitted.** A forest stand delineation shall be submitted before subdivision development plan or site plan approval, and before the issuance of any grading permit, sediment control plan approval or any other permit is issued for a regulated activity.
- b. **Qualified Professional.** The delineation shall be prepared by a licensed forester, licensed landscape architect, or a qualified professional, as specified in COMAR 08.19.06.01A.
- c. **Components.** The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall be considered complete if it includes the following components:
 - (1) a topographic map delineating intermittent and perennial streams, and steep slopes over 25%;
 - (2) a soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more;
 - (3) forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;
 - (4) location of 100-year floodplains;
 - (5) information required by the City of Hagerstown Forest Conservation Technical Manual; and
 - (6) other information the City of Hagerstown determines is necessary to implement this Article.
- d. **Simplified Delineation.** If approved by the Planning and Code Administration Department, a simplified forest stand delineation may be submitted for an area:
 - (1) when no forest cover is disturbed during a regulated activity; or
 - (2) all forest on the site is designated to be under a long-term protective agreement.
- e. **Components of Simplified Delineation.** A simplified forest stand delineation shall be considered complete if it includes:
 - (1) all requirements under Subsection C.1.c (1), (2), (4), (5) and (6) of this Article (above);
 - (2) a map showing existing forest cover as verified by field inspection by City of Hagerstown personnel; and

- (3) other information required by this Article.
- f. **Expiration of Plan.** An approved forest stand delineation may remain in effect for a period not longer than five (5) years from the date of approval by the Planning and Code Administration Department.
- g. **Time for Submittal.**
 - (1) Within 30 calendar days after receipt of the complete forest stand delineation, the Planning and Code Administration Department shall notify the applicant whether the forest stand delineation is complete and correct.
 - (2) If the Planning and Code Administration Department fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
 - (3) The Planning and Code Administration Department may require further information or provide for an additional 15 calendar days under extenuating circumstances.
 - (4) The 30-day review period may be extended in 15-day increments by the Planning and Code Administration Department upon appropriate notification of the applicant.

D. Forest Conservation Plan.**1. General Provisions.**

- a. **Priorities.** In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.
- b. **Plan Strategy.** Except when using the Express Procedures described in Section E if existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Planning Commission:
 - (1) how techniques for forest retention have been exhausted;
 - (2) why the priority forests and priority areas specified in Subsection F.2 of this Article cannot be left in an undisturbed condition;
 - (a) if priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Section H of this Article; and
 - (b) where on the site in priority areas afforestation or reforestation will occur in compliance with Section H of this Article.
 - (3) How the disturbance to the priority forests and priority areas as specified in Subsection F.2 of this Article qualifies for a variance.
- c. **Fee Contribution.** Except when using the Express Procedures as described in Section E, the applicant shall demonstrate to the satisfaction of the Planning Commission that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.
- d. **Discretion of the Planning Commission.** The Planning Commission shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- e. **Non-Tidal Wetlands.** A regulated activity under the local program is subject to the following requirements:
 - (1) For the purposes of delineation, permitting, and mitigation, areas determined to be non-tidal wetlands under Environmental Article, Title 9, Annotated Code of Maryland shall be regulated under Environmental Article, Title 9, Annotated Code of Maryland or this Article, whichever is more stringent.
 - (2) For the purpose of calculating reforestation mitigation under this Article, a forested non-tidal wetland permitted to be cut or cleared and required to be mitigated under COMAR 08.05.04 shall be shown on the forest conservation plan and subtracted on an acre-for-acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

- (3) Non-tidal wetlands shall be considered to be priority areas for retention and replacement.
- (4) Forested non-tidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the non-tidal wetlands and to avoid delay in the approval process.
- f. **On-site Compliance Spanning Residential Lots Discouraged.** This Article discourages compliance plans that reserve portions of residential building lots for easements for retention, afforestation or reforestation in order to meet the requirements of this Article. Such proposals result in long-term conflicts with homeowners desiring to make reasonable use of their yard areas for customary residential accessory uses. This provision shall not prevent the Planning Commission from considering such concepts on a case-by-case basis.

2. **Preliminary Forest Conservation Plan.**

- a. **Qualified Professional.** A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
- b. **Components.** A preliminary forest conservation plan shall be submitted with the subdivision development plan or plan for a regulated activity and shall be considered complete if it includes the following components:
 - (1) The approved forest stand delineation for the site;
 - (2) Include a table that lists the proposed values of the following, in square feet:
 - (a) net tract area,
 - (b) area of forest conservation required, and
 - (c) area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;
 - (3) Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;
 - (4) An explanation of how the provisions of Subsection D.1 of this Article have been met;
 - (5) In the case of afforestation or reforestation, a proposed afforestation or reforestation plan;
 - (6) A proposed construction timetable showing the sequence of forest conservation procedures;
 - (7) The proposed limits of disturbance;
 - (8) The proposed stockpile areas;

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- (9) A proposed two- (2-) year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;
 - (10) Information required in the City of Hagerstown Forest Conservation Technical Manual; and
 - (11) Other information the City of Hagerstown determines is necessary to implement this Article.
- c. **When Submitted.** The review of the preliminary forest conservation plan shall be concurrent with the review of the site plan or subdivision development plan.
 - d. **Modification During Staff Review.** During the different stages of the review process, the preliminary forest conservation plan may be modified, as required by the Planning and Code Administration Department, prior to approval by the Planning Commission.
3. **The Final Forest Conservation Plan.**
- a. **Qualified Professional.** A final forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01B.
 - b. **Components.** A final forest conservation plan shall be submitted with a final plan of subdivision, or plan for a regulated activity, and shall be considered complete if it includes the following components:
 - (1) Proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - (2) In the case of afforestation or reforestation, an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 - (3) A binding two- (2-) year maintenance agreement specified in Section K of this Article and COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - (a) Watering, and
 - (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the City of Hagerstown Forest Conservation Technical Manual;
 - (4) A long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
 - (a) Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and

- (b) Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
 - (5) The substantive elements required under Subsection D.2.b (1) through (4), (6) through (8), and (10) of this Article, as finalized elements of the forest conservation plan; and
 - (6) Other information the Planning and Code Administration Department determines is necessary to implement this Article.
- c. **Time for Submittal.**
 - (1) Within 45 calendar days after receipt of a complete final forest conservation plan, the Planning Commission shall notify the applicant whether the forest conservation plan is approved.
 - (2) If the Planning Commission fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
 - (3) The Planning Commission may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.
 - (4) At the request of the applicant, the Planning Commission may extend the deadline under extenuating circumstances.
- d. **Concurrent with Final Plat.** The Planning Commission's review and approval 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 plan approval associated with the project. The final forest conservation plan shall be approved prior to the issuance of any permits.
- e. **Revocation of Plan.** The City of Hagerstown may revoke an approved forest conservation plan if it finds that:
 - (1) a provision of the plan has been violated;
 - (2) approval of the plan 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 site necessitate preparation of a new or amended plan.
- f. **Stop Work Order.** The City of Hagerstown may issue a stop work order against a person who violates a provision of this Article or a regulation, order, approved forest conservation plan, or maintenance agreement.
- g. **Notification.** Before revoking approval of a forest conservation plan, the City of Hagerstown shall notify the violator in writing and provide an opportunity for a hearing.

E. Express Procedures.**1. Purpose and Intent.**

- a. **Purpose.** The purpose of an Express Procedure is to provide an alternate review and approval mechanism which will allow certain development activities to meet the intent of the Forest Conservation Ordinance through a review and approval process that is proportionate to the impact on forest resources.
- b. **Process.** The Express Procedure allows the combination of the various steps in the review process that are described as separate in this Article. It will not require documentation of a progression through the sequence of priorities for afforestation and reforestation.
- c. **Intent.** Certain development activities, such as those described in the eligibility standards contained in this Article, result in small afforested or reforested areas that may not be located in priority areas and provide little or no real benefit to improvements in water quality. The goal of the Express Procedure is to create significant-sized forest stands in priority areas where they will provide real benefits to improvements in water quality. This will occur through the aggregation and accumulation of payment-in-lieu of fees. The funds are expended by the City of Hagerstown on a schedule and in locations that will more closely meet the intent and purpose of this Article.

2. Eligibility to Use Express Procedure. An application must meet the following criteria in order to use the Express Procedure.

- a. Subdivisions of five lots or less when the afforestation or reforestation requirement as calculated from the worksheet is two acres or less; or
- b. Where no subdivision is proposed, when the afforestation or reforestation requirements as calculated from the worksheet is two acres or less; and
- c. There is no disturbance proposed in those priority areas described in Subsection F.2 and Subsections H.1.c, (1), (2), (4), (5), (6) and, (7).

3. The Express Procedure.

- a. **Discretion of the Applicant.** If the eligibility criteria are met, the applicant may choose to use the Express Procedure without prior approval by the Planning Commission.
- b. **Non-Exclusive.** Nothing in this section shall prevent the applicant from using the procedures described elsewhere in this Article.
- c. **Simplified Format.** The Forest Stand Delineation may be prepared in the simplified format as described in Subsection C.1.d. In addition, the Forest Stand Delineation shall identify those areas described in Subsection E.2.c.
- d. **Concurrence with Subdivision or Site Plan.** The Forest Stand Delineation and Forest Conservation Plan may be submitted, reviewed and approved concurrently with the applicable subdivision or site plan.

- e. **Area Affected.** The net tract area as requested on the worksheet and upon which calculations are based to determine afforestation and reforestation requirements shall be equal to the area of the proposed subdivided lots or the area of the entire parcel to be developed when no subdivision is proposed.
 - f. **Discretion of the Applicant.** The applicant may select the payment-in-lieu of fee to meet the requirements of afforestation or reforestation without prior approval by the Planning Commission.
 - g. **Timing of Payment-in-Lieu.** The payment-in-lieu of fee shall be paid prior to the issuance of a permit to begin construction activity.
4. **Additional Guidelines.**
- a. **Remaining Lands Not Eligible for Express Procedure.** After an applicant has chosen to use the Express Procedure for an eligible subdivision, the remaining land of the original parcel is not eligible to use the procedure again. It shall be subject to the requirements of this Article as if the Express Procedure did not exist.
 - b. **When in Variation with Other Provisions.** Where the Express Procedures described in this Article vary from those described elsewhere in this Article, the Express Procedures may be followed without violation of the Article as long as the subdivision or site development proposal meets the eligibility requirements.

F. Afforestation and Retention.

1. **Afforestation Requirement.** Except for linear projects that involve no change in land use, a person making application for a regulated activity after the effective date of this Article shall:

a. **Threshold Ratios.** Conduct afforestation on the lot or parcel in accordance with the following:

	Category of Use	Afforestation Threshold Percentage
(1)	Agricultural and resource areas	20%
(2)	Medium density residential areas	20%
(3)	Institutional development areas	15%
(4)	High-density residential areas	15%
(5)	Mixed-use and planned unit development areas	15%
(6)	Commercial and industrial use areas	15%

b. **Cutting Below Ratios.** Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Subsection F.1.a of this Article:

- (1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
- (2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 2 to 1 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.

2. **Retention – Priority.** 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 Planning Commission, that reasonable efforts have been made to protect them and the project plan cannot be reasonably altered:

- a. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, steep slopes, non-tidal wetlands, and critical habitats;
- b. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site;

3. **Retention – Priority – Need for Variance.** 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 Planning Commission that the applicant qualifies for a variance in accordance with Section M of this Article:

- a. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - (1) The Federal Endangered Species Act of 1973 in 16 U.S.C. §§1531 through 1544 and in 50 CFR Part 7;
 - (2) The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§10-2A-01 through 10-2A-09, Annotated Code of Maryland; and
 - (3) COMAR 08.03.08;

- b. Trees that:
 - (1) Are part of an historic site,
 - (2) Are associated with a historic structure, or
 - (3) Have been designated by the state or the City of Hagerstown as a national, state, county or city champion tree; and

- c. Any tree having a diameter measured at four and five tenths (4.5) feet above the ground of:
 - (1) 30 inches or more; or
 - (2) 75% or more of the diameter, measured at four and five tenths (4.5) feet above the ground, of the current state champion tree of that species as designated by the Department of Natural Resources.

G. Reforestation.

1. Forest Conservation Threshold.

- a. **Threshold.** There is a forest conservation threshold established for all land use categories, as provided in Subsection b 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 quarter (1/4) acre planted for each acre removed above the threshold to a ratio of two (2) acres planted for each acre removed below the threshold.
- b. **Reforestation for Cutting Below Threshold.** After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a regulated activity and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or at the option of the Planning Commission, payment into the forest conservation fund, according to the formula set forth in this Article and consistent with Subsection D.1 of this Article, and the following forest conservation thresholds for the applicable land use category:

	Category of Use	Conservation Threshold Percentage
(1)	Agricultural and resource areas	50%
(2)	Medium density residential areas	25%
(3)	Institutional development areas	20%
(4)	High-density residential areas	20%
(5)	Mixed-use and planned unit development areas	15%
(6)	Commercial and industrial use areas	15%

c. Calculations.

- (1) For all existing forest cover measured to the nearest one tenth (1/10) acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of one quarter (1/4) acre planted for each acre removed.
- (2) 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 paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the City of Hagerstown Forest Conservation Technical Manual.
- (3) For all existing forest cover measured to the nearest one tenth (1/10) 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 and at a ratio of one quarter (1/4) acre planted for each acre removed above the threshold.

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H. Sequence, Priorities and Time Requirements for Afforestation and Reforestation.**1. Sequence for Afforestation and Reforestation.**

- a. **Sequence.** After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the this Article, is as follows:
 - (1) Forest creation in accordance with a forest conservation plan using one or more of the following:
 - (a) Transplanted or nursery stock,
 - (b) Whip and seedling stock, or
 - (c) Natural regeneration where it can be adequately shown to meet the objective of the State Forest Conservation Technical Manual;
 - (2) Planting street trees for afforestation or reforestation with a mature canopy coverage may be granted full credit as a mitigation technique;
 - (3) Acquisition of an off-site protection easement on existing forested areas not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest cover protected;
 - (4) When all other options, both on-site and off-site, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.
- b. **Alternative Sequences.** A sequence other than the one described in Subsection a. above may be used for a specific project, if necessary, to achieve the objectives of the City's forest conservation policies or to take advantage of opportunities to consolidate forest conservation efforts.
- c. **Priority.** The following are considered a priority for afforestation and reforestation.
 - (1) Establish or enhance forest buffers adjacent to intermittent and perennial streams to widths of at least 50 feet;
 - (2) Establish forest or enhance non-forested areas on 100-year floodplains, when appropriate;
 - (3) Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and where practical, forested corridors should be a minimum of 300 feet in width to facilitate wildlife movement;
 - (4) Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - (5) Establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;

- (6) Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
 - (7) Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
 - (8) Use native plant materials for afforestation or reforestation, when appropriate.
- d. **Time Frames for Planting.** A person required to conduct afforestation or reforestation under this Article shall accomplish it following development project completion within one year or two growing seasons, whichever is a greater period of time.

I. Payment-In-Lieu of Afforestation and Reforestation.**1. Forest Conservation Fund.**

- a. **Fund Created.** There is established a forest conservation fund in the local program.
- b. **Fee Rate.** If a person subject to this Article demonstrates to the satisfaction of the Planning Commission that requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished or the person is eligible to use the Express Procedure as described in Section E, the person shall contribute money into the City of Hagerstown forest conservation fund at a rate of:
 - (1) \$0.30 per square foot of the area of required planting until December 31, 2013, and
 - (2) adjusted for inflation as determined by the Planning and Code Administration Department annually after December 31, 2013.

Nothing in this provision shall prohibit the City of Hagerstown from setting a fee rate that exceeds that set by the Department of Natural Resources for the State equivalent of this Article, and at no time shall the fee be set lower than the rate set by the State of Maryland. Planning Commission approval of the use of fee-in-lieu contribution shall be identified and measured in the amount of area subject to compliance. Payment of fee-in-lieu contributions will be made based on the amount of area approved by the Planning Commission and the rate in effect at the time the applicant remits payment.

- c. **Authority of the Planning Commission.** The Planning Commission shall have the authority to determine if a payment instead of afforestation or reforestation is permitted and appropriate.
- d. **Discretion of Applicant When Using Express Procedure.** When an applicant is eligible to use the Express Procedure described in Section E, the decision to select the payment-in-lieu of afforestation or reforestation shall not require prior approval by the Planning Commission.
- e. **Timing of Fee Payment.** Money contributed instead of afforestation or reforestation under this Article shall be paid prior to the issuance of a permit to begin the construction activity. Planning Commission approval of the use of fee-in-lieu contribution shall be identified and measured in the amount of area subject to compliance. Payment of fee-in-lieu contributions will be made based on the amount of area approved by the Planning Commission and the rate in effect at the time the applicant remits payment.
- f. **Time Frame for Planting.** Money contributed under this Article shall remain in the fund for a period not to exceed two growing seasons. Money deposited in the local conservation fund may only be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, preparation, maintenance of existing forests and achieving urban canopy goals, and shall be deposited in a separate forest conservation fund and may not revert to the general fund.
- g. **Extensions.** The time period specified in Subsection f above may be extended one time for an additional one year or two growing seasons by the Planning Commission with appropriate notification to the person who contributed the money.

- h. **When Planting Outside of City Limits.** Except as provided in Subsection d. of this section, sites for the reforestation or afforestation requirement using fund money contributed under this Article shall occur in the city or, if outside the city, on any property owned by the City of Hagerstown.

J. Recommended Tree Species.

1. **Native Species Preferred.**

Tree species used for afforestation or reforestation shall be native to the area, unless approved by the City, and selected from a list of approved species established by the City of Hagerstown.

2. **Tree Species List.**

The City of Hagerstown shall adopt a list of tree species to be used for any required afforestation or reforestation and incorporate it into the Forest Conservation Technical Manual.

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K. Financial Security for Afforestation and Reforestation.

1. Performance Bond or Other Acceptable Surety.

- a. **Security Required.** A person required to conduct afforestation or reforestation under this Article shall furnish financial security in the form of a bond, an irrevocable letter of credit, or other security approved by the Planning Commission. The surety shall:
 - (1) assure that the afforestation, reforestation, and the associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan;
 - (2) be in an amount equal to the estimated cost, as determined by the City of Hagerstown, of afforestation and reforestation; and
 - (3) be in a form and of a content approved by the City of Hagerstown.
- b. **Reduction of Security.** After one growing season, the person required to file a bond under Subsection K.1.a of this Article may request reduction of the amount of the bond or other financial security by submitting a written request to the Planning and Code Administration Department with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met.
- c. **City Review of Alternate Bond Amounts.** The City of Hagerstown shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
 - (1) the number of acres,
 - (2) the proposed method of afforestation or reforestation,
 - (3) the cost of planting materials or replacement materials,
 - (4) the cost of maintenance of the afforestation or reforestation project, and
 - (5) other relevant factors.
- d. **Release of Security.** If, after one year or two growing seasons, whichever is greater, the plantings associated with the afforestation or reforestation meet or exceed the standards of the City of Hagerstown Forest Conservation Technical Manual, the amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released. If the planted area does not meet survival requirements, the maintenance period shall be extended by an additional term.

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L. Standards for Protecting Trees from Construction Activities.

1. Standards Adopted.

The City hereby adopts standards for the protection of trees from construction activity that are included in the City of Hagerstown Forest Conservation Technical Manual.

2. Installation of Protective Devices Required.

Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Article, the applicant shall demonstrate to the City of Hagerstown that protective devices have been established.

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M. Variances, Appeals, Enforcement and Penalties.**1. Variance Procedure.**

- a. **Hardship.** A person may request that a variance from this Article be granted by the Planning Commission if the person demonstrates that enforcement would result in unwarranted hardship.
- b. **Requirements.** An applicant for a variance shall:
 - (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - (2) describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - (3) verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - (4) verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
 - (5) verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - (6) verify that the granting of a variance will not adversely affect water quality.
- c. **Findings.** The Planning and Code Administration Department shall make findings that the applicant has met the requirements in Subsections a. and b. of this Section before the Planning Commission may grant a variance.
- d. **Notice.** Notice of a request for a variance shall be given to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.
- e. **Department of Natural Resources.** There is established by this Article the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the state concerning an approval of a variance under Natural Resources Article, §§5-1601 through 5-1612, Annotated Code of Maryland, or this Article.

2. Appeals.

The appeal procedure as applies to this Article shall be in accordance with the provisions of Article 8 of this Code.

3. Enforcement and Penalties.

Enforcement of the provisions of this Article, and penalties for violation thereof shall be in accordance with the provisions of Article 8 of this Code.

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N. Annual Report, Biennial Review by the Department of Natural Resources and Effective Date and Subsequent Amendments.**1. Annual Report.**

On or before March 31 of each year, the Planning and Code Administration Department shall submit to the Maryland Department of Natural Resources Forest Service a report on:

- a. The number, location, and type of projects subject to the provisions of this Article;
- b. The amount and location of acres cleared, conserved, and planted in connection with a development project;
- c. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
- d. The costs of implementing the Forest Conservation Program;
- e. The size, location and protection of any local forest mitigation banks which are created under a local or State program;
- f. The number, location and type of violations and type of enforcement activity conducted in accordance with this subtitle; and
- g. To the extent practicable, the size and location of all conserved and planted forest areas, submitted in an electronic geographic information system or computer aided design format.

2. Biennial Review.

The Planning and Code Administration Department shall submit the necessary documentation to comply with COMAR 08.19.02.04.

3. Effective Date and Subsequent Amendments.

This Article is hereby enacted and becomes effective May 21, 1999. This Article may be amended as required. All amendments to this Article are subject to the approval of the Department of Natural Resources.

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