

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 20-0546

Introduced by: The Council President, Councilmembers Bullock, Dorsey, Clarke, Burnett, Sneed,
Henry, Cohen

At the request of: The Administration (Department of Planning)

Introduced and read first time: June 22, 2020

Assigned to: Judiciary Committee

Committee Report: Favorable with amendments

Council action: Adopted

Read second time: August 17, 2020

AN ORDINANCE CONCERNING

Natural Resources – Forest and Tree Conservation

1
2 FOR the purpose of amending the Forest and Tree Conservation provisions of Article 7 of the
3 Baltimore City Code to comply with new State requirements, to coordinate with other City
4 environmental requirements, and to align the Code with existing policy; correcting certain
5 references; allowing for mitigation to be provided through forest mitigation banks located
6 within the City; updating the requirements for mitigation fee usage; aligning the allowed uses
7 of forest conservation funds with the definitions allowed by the State; ~~adding annual~~
8 ~~reporting and biennial review requirements, as required by the State;~~ reducing the amount of
9 required land that triggers a review to conform with the amount of required land for grading
10 or building permits; requiring that a Forest Stand Delineation be an element of other reviews,
11 including Site Plan Review, subdivision, grading, and erosion and sediment control; requiring
12 that all grading and building permits, and sediment, and erosion control, subdivision, or
13 development plan approvals be conditioned on approval of and compliance with an approved
14 Forest Conservation Plan; modifying mitigation fees to conform with Critical Area and
15 Landscape Manual mitigation fees and modifying the amount of violation fines; adding a
16 definition for “critical root zone” to the Code and modifying the definition of “specimen
17 tree”; allowing notifications to applicants to be sent by email; adding a specimen tree
18 mitigation policy to the Code; requiring that applicants notify adjacent property owners for
19 significant impacts to off-site specimen trees; establishing a procedure, with criteria and
20 requirements, for modifying existing forest conservation easements; clarifying that variances
21 may be granted in advance of activity requiring Forest Conservation approval and that
22 variances may not be granted after violation of the provisions of this Code; providing for a
23 special effective date; and generally relating to forest and tree conservation; and approving
24 and adopting a new Baltimore City Forest Conservation Manual (2020 Edition).

25 BY repealing and reordaining, with amendments
26 Article 7 - Natural Resources
27 Division IV - Forest and Tree Conservation
28 Baltimore City Code
29 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 BY approving and adopting
2 The Baltimore City Forest Conservation Manual (2020 Edition)

3 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That a
4 new Baltimore City Forest Conservation Manual (2020 Edition), as prepared, edited, and
5 published by the Baltimore City Department of Planning, is approved and adopted.

6 **SECTION 2. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
7 Laws of Baltimore City read as follows:

8 **Baltimore City Code**

9 **Article 7. Natural Resources**

10 ***Division IV: Forest and Tree Conservation***

11 **Subtitle 41**

12 **PURPOSE; Definitions; General Provisions**

13 **§ 41-1. [Definitions] PURPOSE.**

14 THE PURPOSE OF THIS DIVISION IV IS TO:

- 15 (1) ENCOURAGE THE PRESERVATION AND ENHANCEMENT OF THE CITY'S URBAN FORESTS;
16 (2) REPLACE AND INCREASE TREE COVER IN NON-FOREST AREAS WITHIN THE CITY;
17 (3) ESTABLISH PROCEDURES, STANDARDS AND REQUIREMENTS THAT PROTECT TREES AND
18 FORESTS DURING AND AFTER DEVELOPMENT ACTIVITY AND MINIMIZE TREE LOSS DUE
19 TO DEVELOPMENT ACTIVITY;
20 (4) ESTABLISH PROCEDURES, STANDARDS AND REQUIREMENTS FOR AFFORESTATION,
21 REFORESTATION, AND SPECIMEN TREE MITIGATION WITHIN THE CITY; AND
22 (5) MEET THE REQUIREMENTS OF THE NATURAL RESOURCES ARTICLE, SECTIONS 5-1601
23 THROUGH 5-1612 OF THE ANNOTATED CODE OF MARYLAND.

24 **§ 41-2. [41-1.] Definitions.**

25 (a) *In general.*

26 In this Division IV, the following terms have the meanings indicated.

27 (b) *Afforestation.*

28 "Afforestation" means:

- 29 (1) the establishment of forest cover on an area from which it has always or very long
30 been absent, or

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1 (2) the planting of open areas which are not presently in forest cover; and

2 (3) establishment of a forest according to procedures set forth in the Baltimore City
3 Forest Conservation Manual.

4 (c) *Baltimore City Forest Conservation Manual.*

5 “Baltimore City Forest Conservation Manual” (“Manual”) includes the State Forest
6 Conservation Manual and the Baltimore City Forest Conservation Supplement to the
7 State Forest Conservation Manual.

8 (d) *Clear.*

9 “Clear” means removal of any woody plant, wherein the stump and root mass are
10 physically removed.

11 (E) *CRITICAL ROOT ZONE.*

12 “CRITICAL ROOT ZONE” MEANS A CIRCULAR REGION MEASURED OUTWARD FROM A TREE
13 TRUNK REPRESENTING THE AREA OF THE ROOTS THAT MUST BE MAINTAINED OR
14 PROTECTED FOR THE TREE’S SURVIVAL. CRITICAL ROOT ZONE SHALL BE MEASURED AS
15 ONE FOOT OF RADIAL DISTANCE FOR EVERY INCH OF TREE DIAMETER (DBH) MEASURED AT
16 4.5 FEET ABOVE THE GROUND WITH A MINIMUM RADIUS OF 8 FEET. FOR SPECIMEN TREES
17 THE CRITICAL ROOT ZONE SHALL BE MEASURED AS 1.5 FEET OF RADIAL DISTANCE FOR
18 EVERY INCH OF TREE DIAMETER.

19 (F) [e] *Cut.*

20 “Cut” means the removal of a woody plant, wherein the stump and root mass remain in
21 place and intact.

22 (G) [f] *Declaration of intent.*

23 “Declaration of intent” means a document whose purpose is to verify that the proposed
24 activity is exempt under the provisions of the Natural Resources Article and this Division
25 IV.

26 (H) [g] *Department.*

27 “Department” means the Baltimore City Department of Planning.

28 (I) [h] *Forest.*

29 “Forest” includes:

30 (1) a biological community dominated by trees and other woody plants covering a
31 land area of 4,000 square feet or greater. This area must have a live tree density of
32 at least 100 trees per acre, with at least 50% of those trees having a 2-inch or
33 greater diameter at 4.5 feet above the ground;

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1 (2) areas that have been cut, but not cleared; and

2 (3) “forest” does not include orchards or Christmas tree plantations.

3 (J) [i] *Forest conservation.*

4 “Forest conservation” means the retention of existing forest or the creation of new forest
5 as prescribed by the Department of Planning and the Baltimore City Forest Conservation
6 Manual.

7 (K) [j] *Forest conservation plan.*

8 “Forest conservation plan” means a plan approved pursuant to Subtitles 42 and 44 of this
9 Division IV and the requirements of the Baltimore City Forest Conservation Manual.

10 (L) [k] *Forest stand delineation.*

11 “Forest stand delineation” means the description of the existing vegetation on a site
12 proposed for development, prepared according to the requirements of the Baltimore City
13 Forest Conservation Technical Manual and this Division IV.

14 (M) [l] *Person.*

15 “Person” includes the federal government, the state, any county, municipal corporation, or
16 other political subdivision of the state, or any of their units, or an individual, receiver,
17 trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any
18 partnership, firm, association, public or private corporation, or any of their affiliates, or
19 any other entity.

20 (N) [m] *Reforest; reforestation.*

21 “Reforest” or “reforestation” means to create a biological community dominated by trees
22 and other woody plants containing at least 100 trees per acre with at least 50% of those
23 trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet
24 above the ground within 5 years and includes afforestation or establishment of a forest
25 according to procedures set forth in the Baltimore City Forest Conservation Manual.

26 (O) [n] *Regulated activity.*

27 “Regulated activity” means any activity subject to the requirements of § 42-1 of this
28 Division IV.

29 (P) [o] *Retention.*

30 “Retention” means the deliberate holding and protecting of existing trees, shrubs, or
31 plants on the site according to established standards in the Baltimore City Forest
32 Conservation Manual.

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1 (Q) SPECIMEN TREE.

2 “SPECIMEN TREE” MEANS A TREE HAVING A DIAMETER MEASURED AT 4.5 FEET ABOVE THE
3 GROUND OF 20 INCHES OR MORE OR TREES HAVING 75% OR MORE OF THE DIAMETER OF
4 THE CURRENT STATE CHAMPION TREE OF THAT SPECIES.

5 (R) [q] *Tree*.

6 “Tree” means a large, woody plant having 1 or several self-supporting stems or trunks
7 and numerous branches that reach a height of at least 20 feet at maturity.

8 **§ 41-3. [41-2.] Statutory references.**

9 Whenever a provision of this Division IV refers to any portion of the Maryland Code, the
10 Code of Maryland Regulations {COMAR}, and the State Forest Conservation Manual, the
11 reference applies to any subsequent amendment to that portion of the code, regulations, or
12 manual unless the referring provision expressly provides otherwise.

13 **§ 41-4. [41-3.] Scope of Division – In general.**

14 (1) Except as provided in § [41-4] 41-5 of this subtitle, this Division IV applies to:

15 (I) [(1)] any person making application for a grading or [sediment and erosion control]
16 BUILDING permit on a parcel OR PARCELS of land FOR A TOTAL AREA OF [20, 000]
17 5,000 square feet or greater;

18 (II) [(2)] any person making application for a subdivision or development plan on a parcel
19 OR PARCELS of land FOR A TOTAL AREA OF greater than [20,000] 5,000 square feet;
20 AND

21 [(3)] any person applying after January 1, 1993, for subdivision or site plan approval less
22 than 5 years after the area has been cut; and]

23 (III) [(4)] a public utility not exempt under§ [41-4(b)(3)] 41-5(B)(3) of this subtitle.

24 (2) ALL SUBDIVISION OR DEVELOPMENT PLAN APPROVALS SUBJECT TO THIS DIVISION IV
25 SHALL BE CONDITIONED ON APPROVAL OF A CONCEPT FOREST CONSERVATION PLAN. ALL
26 GRADING OR BUILDING PERMITS SUBJECT TO THIS DIVISION IV SHALL BE ISSUED
27 CONDITIONED ON APPROVAL OF AND COMPLIANCE WITH A FOREST CONSERVATION PLAN.

28 **§ 41-5. [41-4.] Scope of Division – Exemptions.**

29 (a) *Definitions*.

30 (1) *Commercial logging or timber harvesting operations*.

31 “Commercial logging or timber harvesting operations” means those activities which
32 result in the cutting and removing of tree stems from a site for commercial purposes,
33 leaving the root mass intact.

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1 (2) *Timber harvesting.*

2 (i) “Timber harvesting” means a tree-cutting operation affecting 1 or more acres
3 of forest or developed woodland within a 1-year interval that disturbs 5,000
4 square feet or more of forest floor.

5 (ii) “Timber harvesting” does not include grubbing and clearing of root mass.

6 (b) *Exempted activities.*

7 This Division IV does not apply to:

8 (1) any highway construction activity that is subject to State Natural Resources
9 Article § 5-103;

10 (2) commercial logging and timber harvesting operations, subject to the forest
11 conservation and management program under State Tax-Property Article § 8-211:

12 (i) that were completed before July 1, 1991; or

13 (ii) were completed on or after July 1, 1991, on property which:

14 (A) is the subject of a declaration of intent signed by the land
15 owner and approved by the Department of Public Works and
16 the Maryland Department of Natural Resource’s Project
17 Forester’s Office as provided in COMAR 08.19.01.05; and

18 (B) has not been the subject of an application for a grading permit
19 for development within 5 years after a logging or timber
20 harvesting operation, but after this 5-year period the property
21 shall be subject to this Division IV;

22 (3) the cutting or clearing of public utility rights-of-way or land for electric generating
23 stations regulated under State Public Utility Companies Article, Title 7, if:

24 (i) required certificates of public convenience and necessity have been issued
25 in accordance with State Natural Resources Article § 5-1603(f); and

26 (ii) the cutting or clearing of the forest is conducted so as to minimize the loss
27 of forest;

28 (4) routine maintenance or emergency repairs of public utility rights-of-way, if:

29 (i) the right-of-way existed before the effective date of the State or this
30 program; or

31 (ii) the right-of-way’s initial construction was approved under this Division
32 IV;

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- 1 (5) any non-coal surface mining regulated under Title 7, Subtitle 6A, of the State
2 Natural Resources Article;
- 3 (6) any preliminary plan of subdivision or any grading or sediment control plan
4 approved before July 1, 1991;
- 5 (7) areas covered by the Chesapeake Bay Critical Area Protection Law;
- 6 (8) a real estate transfer to provide a security, leasehold, or other legal or equitable
7 interest, including a transfer of title, a portion of a lot or parcel, if:
 - 8 (i) the transfer does not involve a change in land use or new development or
9 development, with associated land disturbing activities; and
 - 10 (ii) both the grantor and grantee file a declaration of intent;
- 11 (9) any activity conducted on a single lot of any size provided that the activity:
 - 12 (i) does not result in the cumulative cutting or clearing of [20,000] 5,000
13 square feet or greater of forest; and
 - 14 (ii) does not include an application for a grading or [sediment and erosion
15 control] BUILDING permit for disturbance of [20,000] 5,000 square feet or
16 greater; or
- 17 (10) an activity required for the purpose of constructing a dwelling house intended
18 for the use of the owner, or a child or a grandchild of the owner, if the activity:
 - 19 (i) does not result in the cumulative cutting or clearing of 20,000 square feet
20 or greater of forest;
 - 21 (ii) does not include an application for a grading or sediment and erosion
22 control permit of 20,000 square feet or greater; and
 - 23 (iii) is the subject of a declaration of intent filed with the Department pursuant
24 to § 42-7 of this Division IV.

Subtitle 42
General Requirements

§ 42-1. In general.

(a) *Required delineations, plans, and methods.*

Any person subject to this Division IV:

(1) shall submit to the Department:

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1 (i) a forest stand delineation for the property on which the development is located
2 according to guidelines set forth in the Baltimore City Forest Conservation
3 Manual and this Division IV; and

4 (ii) a forest conservation plan for the property on which the development is
5 located according to guidelines set forth in the Manual and this Division IV;
6 and

7 (2) shall use methods provided in the Manual to protect retained forest and trees
8 during construction.

9 (b) *City agencies using state funds.*

10 If a City agency using state funds makes application to conduct a regulated activity, the
11 provisions of COMAR ~~08.19.04.01D~~ 08.19.04.01D apply.

12 **§ 42-2. Preparation of plans.**

13 The forest stand delineation, the forest conservation plan, including preliminary and final
14 plan, and the afforestation plan shall be prepared by a licensed forester, licensed landscape
15 architect, or other qualified professional as provided in COMAR 08.19.06.01B.

16 **§ 42-3. Authorized signatory.**

17 (a) *Who must sign.*

18 The forest stand delineation, preliminary and final forest conservation plans and
19 afforestation/reforestation plans shall be signed by:

20 (1) an officer of the corporation or an authorized agent of a corporation;

21 (2) an authorized official of a federal, state, or local government;

22 (3) a partner of an association or partnership; or

23 (4) an individual applicant.

24 (b) *Responsibility of signatory.*

25 The individual who signs an application is responsible for the truth, accuracy, and
26 completeness of all information in the application.

27 **§ 42-4. Review.**

28 The Department shall review an application for a forest stand delineation, forestation and
29 deforestation plans, and preliminary and final forest conservation plans to determine whether
30 they are complete and correct, and shall acknowledge receipt of the application in writing by
31 regular first class mail OR EMAIL.

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§ 42-5. Completeness of application.

The Department shall consider a forest stand delineation, preliminary and final forest conservation plans, and afforestation plans complete if they contain all of the required information listed in the Baltimore City Forest Conservation Manual.

§ 42-6. Notification of completeness.

(a) *To be given within 45 days.*

Within 45 calendar days after receipt of the forest stand delineation, the preliminary and final forest conservation plans, and the afforestation plan, the Department shall notify the applicant by mail OR EMAIL whether the application is complete and correct or if additional information is required.

(b) *Effect of failure to notify.*

If the Department fails to notify the applicant within 45 days, any plan submitted shall be treated as complete and correct.

(c) *Additional information; extension of review.*

The Department may require further information or provide for an additional 15 calendar days for review of an application under extenuating circumstances.

§ 42-7. Declaration of intent.

(a) *Required for exemption.*

A person seeking an exemption under § 41-4 of this Division IV shall file a declaration of intent with the Department.

(b) *Compliance with COMAR.*

The declaration of intent shall be as specified in COMAR 08.19.01.05.

(c) *Effective term.*

The declaration of intent is effective for 5 years.

§ 42-8. Area subject to calculations.

~~If a person is applying for a grading or [sediment and erosion control] BUILDING permit of an area between [20,000] 5,000 square feet and 40,000 square feet in size, only the area of disturbance is subject to reforestation and afforestation calculations.~~

FOR A GRADING OR BUILDING PERMIT APPLICATION FOR AN AREA 40,000 SQUARE FEET OR GREATER IN SIZE, ONLY THE AREA OF DISTURBANCE IS SUBJECT TO REFORESTATION AND AFFORESTATION CALCULATIONS, UNLESS THE GRADING OR BUILDING PERMIT IS PART OF A MASTER PLAN, DEVELOPMENT PLAN, PLANNED UNIT DEVELOPMENT, OR SUBDIVISION FOR

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1 WHICH THE ENTIRE MASTER PLAN, DEVELOPMENT PLAN, PLANNED UNIT DEVELOPMENT, OR
2 SUBDIVISION IS SUBJECT TO REFORESTATION AND AFFORESTATION CALCULATIONS.

3 **Subtitle 43**
4 **Forest Stand Delineation**

5 **§ 43-1. Time for submission.**

6 (a) *In general.*

7 A forest stand delineation for the affected area shall be submitted:

- 8 (1) at the initial stages of subdivision or site plan approval;
9 (2) before a grading OR BUILDING permit application is submitted; or
10 (3) before a sediment and erosion control application is submitted.

11 (b) *Effect of failure to submit.*

12 If the forest stand delineation is not submitted at this time, no action will be taken on
13 [the] AN application request FOR SUBDIVISION, SITE PLAN, BUILDING, GRADING OR
14 SEDIMENT AND EROSION CONTROL APPROVAL.

15 **§ 43-2. Simplified delineation – When authorized.**

16 A simplified forest stand delineation may be submitted for an area:

- 17 (1) when no forest cover will be disturbed during any construction activity;
18 (2) when an area is designated to be protected under a long term protective agreement;
19 (3) when there is no existing forest on the site; or
20 (4) when approved by the Department.

21 **§ 43-3. Simplified delineation – Requirements.**

22 The Department shall consider a simplified forest stand delineation complete if it includes:

- 23 (1) a topographic map delineating intermittent and perennial streams and steep slopes
24 over 25%;
25 (2) a soils map;
26 (3) location of 100-year floodplain; and
27 (4) any other information necessary for the Department to review the application.

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1 **§ 43-4. Effective term.**

2 An approved forest stand delineation may remain in effect for a period not longer than 5
3 years.

4 **Subtitle 44**
5 **Forest Conservation Plan**

6 **§ 44-1. Preliminary plan.**

7 (a) *Concurrent review.*

8 The review of a preliminary forest conservation plan shall be concurrent with the review
9 of the preliminary site plan.

10 (b) *Modifications.*

11 A preliminary forest conservation plan may be modified during the different stages of the
12 review process, provided the Department approves the changes.

13 **§ 44-2. Retention of existing forest AND SPECIMEN TREES.**

14 In developing a forest conservation plan, the applicant shall give priority to techniques for
15 retaining existing forest AND SPECIMEN TREES on the site. If existing forest AND/OR SPECIMEN
16 TREES on the site subject to a forest conservation plan cannot be retained, the applicant shall
17 demonstrate to the satisfaction of the Department how techniques for retention have been
18 exhausted.

19 **§ 44-3. IMPACTS TO SPECIMEN TREES AND FORESTS ON ADJACENT PROPERTIES.**

20 THE DEPARTMENT MAY ONLY APPROVE CLEARING OR SIGNIFICANT CRITICAL ROOT ZONE
21 IMPACTS TO SPECIMEN TREES OR FORESTS ON ADJACENT PROPERTIES IF THE APPLICANT
22 SUBMITS WRITTEN NOTIFICATION OF THE PROPOSED CLEARING OR SIGNIFICANT CRITICAL ROOT
23 ZONE IMPACTS TO THE OWNERS.

24 **§ 44-4. [44-3.] Revocation of plan – Grounds.**

25 The Department, its designee, or other responsible agency at the request of the Department,
26 may revoke an approved forest conservation plan, including a reforestation and afforestation
27 plan, if it finds that:

28 (1) any provision of the plan has been violated;

29 (2) approval of the plan was obtained through fraud, misrepresentation, a false or
30 misleading statement, or omission of a relevant or material fact; or

31 (3) changes in the development or in the condition of the site necessitate preparation of a
32 new or amended plan.

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§ 44-5. [44-4.] Revocation of plan – Notice and hearing.

Prior to revoking approval of a forest conservation plan, the Department shall notify the owner and/or developer in writing and provide an opportunity for hearing before the Baltimore City Planning Commission.

§ 44-6. [44-5.] Cutting prohibited pending approval.

If a forest conservation plan is required by this Division IV, a person shall not cut, clear, or grade on the development site until the Department has approved the plan. ALL GRADING OR BUILDING PERMITS, AND SUBDIVISION OR DEVELOPMENT PLAN APPROVALS SHALL BE ISSUED CONDITIONED ON APPROVAL OF, AND COMPLIANCE WITH A FOREST CONSERVATION PLAN.

§ 44-7. [44-6.] APPROVAL OF ALTERATION [Alteration] of plan.

The plan cannot be altered without first obtaining approval from the Department.

§ 44-8. MODIFICATION OF A FOREST CONSERVATION EASEMENT.

(A) PROCESS FOR REVIEWING AND APPROVING/DENYING MODIFICATIONS.

THE FOLLOWING REVIEW AND APPROVAL PATHS WILL APPLY TO FOREST CONSERVATION EASEMENT MODIFICATIONS:

- (1) EXPANSION OF AN EASEMENT WITH NO REDUCTION TO THE EASEMENT CAN BE REVIEWED AND APPROVED THROUGH THE STANDARD FOREST CONSERVATION REVIEW PROCESS.
- (2) LESS THAN 5,000 SQUARE FEET OF MODIFICATION TO AN EASEMENT OF AT LEAST 15,000 SQUARE FEET IN SIZE CAN BE REVIEWED AND APPROVED THROUGH THE STANDARD FOREST CONSERVATION REVIEW PROCESS.
- (3) 5,000 SQUARE FEET OR GREATER MODIFICATION TO AN EASEMENT OF AT LEAST 15,000 SQUARE FEET IN SIZE MUST BE APPROVED BY THE PLANNING COMMISSION.
- (4) ANY AMOUNT OF MODIFICATION TO AN EASEMENT ESTABLISHED AS PART OF A PREVIOUS APPROVAL BY THE PLANNING COMMISSION MUST BE APPROVED BY THE PLANNING COMMISSION.
- (5) NO MODIFICATION WILL BE PERMITTED TO REDUCE AN EASEMENT TO LESS THAN 10,000 SQUARE FEET IN SIZE IF THE EASEMENT IS TO REMAIN.
- (6) THE APPLICANT WILL NEED TO SUBMIT:
 - (I) A NEW FOREST STAND DELINEATION IF THE FOREST STAND DELINEATION ON RECORD IS MORE THAN 5 YEARS OLD;
 - (II) A NEW FOREST CONSERVATION PLAN IDENTIFYING THE PROPOSED EASEMENT MODIFICATION(S); THE PLAN MUST DEMONSTRATE THAT THE PROPOSED MODIFICATIONS ENHANCE OR HAVE NO ADVERSE EFFECT ON ~~THE~~

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1 CONSERVATION ATTRIBUTES OF THE PROPERTY, PUBLIC SAFETY, AND THE
2 PUBLIC BENEFIT PUBLIC SAFETY AND THE PUBLIC BENEFIT, AND ENHANCE
3 OR APPROPRIATELY OFFSET ANY ADVERSE EFFECT ON THE CONSERVATION
4 ATTRIBUTES OF THE PROPERTY;

5 (III) INFORMATION DESCRIBING HOW THE REQUEST MEETS ONE OR MORE OF THE
6 “CONDITIONS AND CIRCUMSTANCES UNDER WHICH AN EASEMENT
7 MODIFICATION MAY BE CONSIDERED” AND ALL APPLICABLE “CRITERIA
8 FOR APPROVAL OF AN EASEMENT MODIFICATION” AS LISTED BELOW; AND

9 (IV) A REQUEST TO THE PLANNING COMMISSION FOR FOREST CONSERVATION
10 EASEMENT MODIFICATION, FOR MODIFICATIONS REQUIRING PLANNING
11 COMMISSION APPROVAL.

12 (7) ONCE A REQUEST REQUIRING PLANNING COMMISSION APPROVAL HAS BEEN
13 ACCEPTED AND SCHEDULED FOR PLANNING COMMISSION REVIEW, THE APPLICANT
14 MUST MEET ALL PLANNING COMMISSION HEARING REQUIREMENTS.

15 (B) *CONDITIONS AND CIRCUMSTANCES UNDER WHICH AN EASEMENT MODIFICATION MAY BE*
16 *CONSIDERED.*

17 (1) EXPANSION OF AN EASEMENT.

18 (2) CORRECTION OF OVERSIGHT OR ERROR.

19 (3) MODIFICATION TO ADDRESS AN ENVIRONMENTAL PROBLEM OR PUBLIC SAFETY ISSUE.

20 (4) MODIFICATION TO ACCOMPLISH A PUBLIC BENEFIT.

21 (C) *CRITERIA FOR APPROVAL OF AN EASEMENT MODIFICATION.*

22 THE APPLICANT MUST DEMONSTRATE THAT THE MODIFIED EASEMENT WILL MEET STATE
23 AND LOCAL FOREST CONSERVATION STANDARDS.

24 (1) IN THE CASE OF A CORRECTION OF AN OVERSIGHT OR ERROR, THE APPLICANT MUST
25 DEMONSTRATE THAT AN OVERSIGHT OR ERROR EXISTS IN THE RECORDED
26 EASEMENT DOCUMENTS.

27 (2) IN THE CASE OF A MODIFICATION TO ADDRESS AN ENVIRONMENTAL PROBLEM OR
28 PUBLIC SAFETY ISSUE, THE APPLICANT MUST DEMONSTRATE EXISTENCE AND
29 EXTENT OF THE ENVIRONMENTAL OR PUBLIC SAFETY ISSUE.

30 (3) IN THE CASE OF A MODIFICATION TO ACCOMPLISH A PUBLIC BENEFIT, THE
31 APPLICANT MUST DEMONSTRATE AND QUANTIFY THE PUBLIC BENEFIT THAT
32 WOULD RESULT FROM THE MODIFICATION.

33 (4) IN CASES WHERE A PROPOSED MODIFICATION WOULD RESULT IN REMOVAL OF A
34 PORTION OF THE EXISTING EASEMENT, THE APPLICANT MUST DEMONSTRATE THAT,
35 IN IDENTIFYING THE PROPOSED SOLUTION, ALL POTENTIAL OPTIONS FOR RETAINING
36 THE EASEMENT INTACT WERE EXHAUSTED.

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1 (5) IN CASES WHERE A PROPOSED MODIFICATION WOULD RESULT IN REMOVAL OF A
2 PORTION OF THE EXISTING EASEMENT, THE APPLICANT MUST DEMONSTRATE THAT
3 THE MITIGATION PROPOSED MEETS THE REQUIREMENTS AS CALCULATED USING
4 THE STATE FOREST CONSERVATION WORKSHEET AND THAT THE MITIGATION
5 PROPOSED FOLLOWS THE REQUIRED SEQUENCE FOR MITIGATION AS LISTED UNDER
6 SUBTITLE 45 OF ARTICLE 7, DIVISION IV OF THE CITY CODE. A FEE IN LIEU WILL
7 ONLY BE CONSIDERED AS A LAST RESORT.

8 (6) PROPOSALS TO COMPLETELY REMOVE OR ELIMINATE AN EASEMENT WILL NOT BE
9 CONSIDERED UNLESS THE EXISTING EASEMENT IS REPLACED WITH AN ON- OR OFF-
10 SITE EASEMENT OF EQUIVALENT QUALITY AND OF A SIZE DETERMINED USING THE
11 STATE FOREST CONSERVATION WORKSHEET.

12 (7) EQUIVALENT QUALITY WILL BE DETERMINED BY THE DEPARTMENT OF PLANNING
13 THROUGH A COMPARISON OF THE EXISTING AND PROPOSED EASEMENTS,
14 INCLUDING THE PRESENCE OF PRIORITY FOREST, FOREST STAND MATURITY,
15 HEALTH, AND SPECIES DIVERSITY, AND THE EXTENT OF NON-NATIVE INVASIVE
16 VEGETATION.

17 (8) NO MODIFICATION WILL BE PERMITTED TO REDUCE AN EASEMENT TO LESS THAN
18 10,000 SQUARE FEET IN SIZE, AND MINIMUM DIMENSIONS MUST MEET THE
19 STANDARDS ESTABLISHED IN THE STATE FOREST CONSERVATION TECHNICAL
20 MANUAL.

21 (D) *STEPS FOLLOWING APPROVAL OF A FOREST CONSERVATION EASEMENT MODIFICATION.*

22 (1) SUBMIT A NEW DRAFT RECORD PLAT AND DRAFT EASEMENT AGREEMENT FOR
23 APPROVAL. THE AGREEMENT SHOULD CITE ANY TERMS OR CONDITIONS
24 ASSOCIATED WITH APPROVAL BY THE DEPARTMENT OR THE PLANNING
25 COMMISSION.

26 (2) PROVIDE A DRAFT BOND FOR ANY ON-SITE OR OFF-SITE MITIGATION
27 REQUIREMENTS APPROVED BY THE PLANNING COMMISSION AND WORK WITH THE
28 DEPARTMENT OF PLANNING TO PREPARE A DRAFT MOU DEFINING THE TERMS FOR
29 COMPLETING THE MITIGATION AND RELEASING THE BOND.

30 (3) ONCE THE DRAFT BOND HAS BEEN APPROVED, EXECUTE THE BOND AND
31 ASSOCIATED MOU AND PROVIDE THE ORIGINAL TO THE DEPARTMENT OF
32 PLANNING.

33 (4) ONCE THE RECORD PLAT AND EASEMENT AGREEMENT HAVE BEEN APPROVED BY
34 THE DEPARTMENT OF PLANNING, RECORD THE NEW PLAT AND AGREEMENT WITH
35 THE CIRCUIT COURT FOR BALTIMORE CITY, LAND RECORDS AND LICENSES
36 DIVISION.

37 (5) SATISFY ALL MITIGATION REQUIREMENTS REQUIRED. NOTIFY DEPARTMENT OF
38 PLANNING STAFF FOR INSPECTIONS ONCE MITIGATION HAS BEEN INSTALLED AND
39 AGAIN BEFORE THE TWO-YEAR MAINTENANCE AND ESTABLISHMENT PERIOD
40 CONCLUDES. ONCE ALL MITIGATION AND MAINTENANCE REQUIREMENTS HAVE

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1 BEEN SATISFIED, THE DEPARTMENT OF PLANNING WILL ARRANGE TO RELEASE THE
2 BOND.

3 **Subtitle 45**
4 **Reforestation, [and] Afforestation, AND SPECIMEN TREE MITIGATION**

5 **§ 45-1. Preference for retention.**

6 After every reasonable effort to minimize the cutting of trees and other woody plants is
7 exhausted in the development of a subdivision plan, and/or grading and sediment control
8 plans, the forest conservation plan shall provide for reforestation, [or] afforestation, AND/OR
9 SPECIMEN TREE MITIGATION.

10 **§ 45-2. Required sequence.**

11 (a) *Definitions.*

12 (1) *Off-site.*

13 “Off-site” means not on the same property as the activity which is proposed, is
14 occurring, or which has occurred.

15 (2) *On-site.*

16 “On-site” means the area located within the legal boundary of the property on which
17 the regulated activity is proposed, is occurring, or has occurred.

18 (b) *Sequence for reforestation, etc.*

19 The required sequence for reforestation, [or] afforestation, OR SPECIMEN TREE
20 MITIGATION, after techniques for retaining existing SPECIMEN TREES AND forest on the site
21 have been exhausted, is as follows:

22 ~~(1) USE OF APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE~~
23 ~~CITY; AND~~

24 ~~(2) [(1)] on-site reforestation, [or] afforestation, AND/OR SPECIMEN TREE MITIGATION,~~
25 ~~as specified in the Baltimore City Forest Conservation Manual;~~

26 ~~(3) [(2)] off-site reforestation, [or] afforestation, OR SPECIMEN TREE MITIGATION~~
27 ~~within the City shall be as specified for on-site reforestation OR SPECIMEN TREE~~
28 ~~MITIGATION; and~~

29 ~~(3) USE OF APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE~~
30 ~~CITY; AND~~

31 (4) [(3)] payment into the City Forest Conservation Fund.

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1 **§ 45-3. Reforestation, etc., guidelines; time limits.**

2 (a) *Priority guidelines in Manual.*

3 Persons required to conduct reforestation, [or] afforestation OR SPECIMEN TREE
4 MITIGATION shall follow the priority guidelines outlined in the Baltimore City Forest
5 Conservation Manual.

6 (b) *Period for reforestation, etc.*

7 A person required to conduct reforestation, [or] afforestation, OR SPECIMEN TREE
8 MITIGATION under this Division IV shall accomplish the action within 1 year or 2 growing
9 seasons following the issuance of a grading permit, allowing for phasing in the plan.

10 **§ 45-4. Security required.**

11 [A] BEFORE THE ISSUANCE OF A GRADING OR BUILDING PERMIT, A person required to conduct
12 afforestation, [or] reforestation, OR SPECIMEN TREE MITIGATION under this Division IV shall
13 furnish financial security in the form of a bond, an irrevocable letter of credit, or other
14 security approved by the Department, as provided in the Baltimore City Conservation
15 Supplement to the State Conservation Manual.

16 **Subtitle 46**
17 **Forest Conservation Fund**

18 **§ 46-1. Forest Conservation Fund established.**

19 There is hereby created a Baltimore City Forest Conservation Fund THAT MEETS THE
20 REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §5-1610(H-L), ANNOTATED CODE OF
21 MARYLAND.

22 **§ 46-2. When payments in lieu permitted.**

23 If [neither] reforestation, [nor] afforestation, OR SPECIMEN TREE MITIGATION is NOT possible,
24 AND APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE CITY ARE NOT
25 AVAILABLE, the applicant may make payment into the Forest Conservation Fund. Payment
26 may be accepted into the Conservation Fund under the following circumstances:

- 27 (1) SATISFYING ALL OR A PORTION OF THE REQUIRED reforestation, [or] afforestation, OR
28 SPECIMEN TREE MITIGATION on site is technically infeasible; [and]
- 29 (2) an acceptable [reforestation or afforestation] PLANTING site cannot be found on other
30 land within Baltimore City; AND
- 31 (3) APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE CITY ARE
32 NOT AVAILABLE.

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§ 46-3. Contribution rate.

(A) *CONTRIBUTION RATE IN LIEU OF REFORESTATION OR AFFORESTATION.*

A person permitted by § 46-2 of this subtitle to contribute to this fund in lieu of reforestation or afforestation shall make a payment to the Baltimore City Conservation Fund of [30¢] \$60,000 per [square foot] ACRE of the area requiring planting OR AT A RATE DETERMINED AND ADJUSTED PERIODICALLY BY THE PLANNING COMMISSION AND APPROVED BY THE BOARD OF ESTIMATES.

(B) *CONTRIBUTION RATE IN LIEU OF SPECIMEN TREE MITIGATION.*

A PERSON PERMITTED BY § 46-2 OF THIS SUBTITLE TO CONTRIBUTE TO THIS FUND IN LIEU OF SPECIMEN TREE MITIGATION SHALL MAKE A PAYMENT TO THE BALTIMORE CITY CONSERVATION FUND OF \$300 PER INCH OF REQUIRED MITIGATION, OR AT A RATE AS DETERMINED AND ADJUSTED PERIODICALLY BY THE PLANNING COMMISSION AND APPROVED BY THE BOARD OF ESTIMATES.

§ 46-4. When payable.

Money contributed in lieu of AFFORESTATION, reforestation, OR SPECIMEN TREE MITIGATION shall be paid at the time of the issuance of the grading OR BUILDING permit for the development project.

§ 46-5. Period for City reforestation, etc.

(a) *Period for City action.*

The City shall accomplish the reforestation or afforestation for THE EQUIVALENT NUMBER OF ACRES FOR which the money is deposited within 2 years or 3 growing seasons, [as appropriate] WHICHEVER IS A GREATER TIME PERIOD, after receipt of the money.

(b) *Refund.*

At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money.

§ 46-6. Management of Fund.

(a) *In general.*

Money contributed under this title:

(1) may be used only for reforestation AND AFFORESTATION, including site identification, acquisition, preparation, management, and maintenance[;] OF EXISTING FORESTS, AND ACHIEVING URBAN CANOPY GOALS;

(2) shall be deposited in a separate Forest Conservation Fund; and

(3) shall not revert to the General Fund.

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1 (b) *Site selection.*

2 Sites selected for use of funds shall be located in the City of Baltimore.

3 **SUBTITLE 47**
4 **ANNUAL REPORT AND BIENNIAL REVIEW**

5 **~~§ 47-1. ANNUAL REPORT.~~**

6 ~~ON OR BEFORE MARCH 1 OF EACH YEAR, THE DEPARTMENT SHALL SUBMIT TO THE~~
7 ~~DEPARTMENT OF NATURAL RESOURCES A REPORT WHICH CONTAINS THE:~~

8 ~~(1) NUMBER, LOCATION, AND TYPE OF PROJECTS SUBJECT TO THE PROVISIONS OF THIS~~
9 ~~ORDINANCE; AMOUNT AND LOCATION OF ACRES CLEARED, CONSERVED, AND~~
10 ~~PLANTED, INCLUDING ANY AREAS LOCATED IN THE 100-YEAR FLOODPLAIN, IN~~
11 ~~CONNECTION WITH A DEVELOPMENT PROJECT;~~

12 ~~(2) AMOUNT OF REFORESTATION AND AFFORESTATION FEES AND NONCOMPLIANCE~~
13 ~~PENALTIES COLLECTED AND EXPENDED, THE NUMBER OF ACRES FOR WHICH THE FEES~~
14 ~~WERE COLLECTED, AND THE NUMBER OF ACRES REFORESTED, AFFORESTED, OR~~
15 ~~CONSERVED USING THE FEES;~~

16 ~~(3) COSTS OF IMPLEMENTING THE FOREST CONSERVATION PROGRAM;~~

17 ~~(4) LOCATION AND SIZE OF ALL FOREST MITIGATION BANKS APPROVED DURING THE PAST~~
18 ~~YEAR WITH A DESCRIPTION OF THE PRIORITY AREAS AFFORESTED OR REFORESTED BY~~
19 ~~THE BANK;~~

20 ~~(5) NUMBER OF ACRES DEBITED FROM EACH FOREST MITIGATION BANK SINCE THE LAST~~
21 ~~ANNUAL REPORT;~~

22 ~~(6) FOREST MITIGATION BANKS INSPECTED SINCE THE LAST ANNUAL REPORT;~~

23 ~~(7) NUMBER, LOCATION, AND TYPES OF VIOLATIONS AND TYPES OF ENFORCEMENT~~
24 ~~ACTIVITIES CONDUCTED; AND~~

25 ~~(8) THE SIZE AND LOCATION OF ALL CONSERVED AND PLANTED FOREST AREAS SHALL BE~~
26 ~~SUBMITTED IN AN ELECTRONIC GEOGRAPHIC INFORMATION SYSTEM OR COMPUTER~~
27 ~~AIDED DESIGN FORMAT IF POSSIBLE. IF NOT POSSIBLE, THE LOCATION SHALL BE GIVEN~~
28 ~~BY MARYLAND STATE PLANE GRID COORDINATES AND 8-DIGIT SUB-WATERSHED.~~

29 **~~§ 47-2. BIENNIAL REVIEW BY THE DEPARTMENT OF NATURAL RESOURCES.~~**

30 ~~THE DEPARTMENT SHALL SUBMIT THE NECESSARY DOCUMENTATION TO COMPLY WITH~~
31 ~~COMAR 08.19.02.04.~~

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**Subtitle ~~{47}~~ 48
Variances**

§ ~~48-1.~~ {47-1.} “Variance” defined.

“Variance” means the process of obtaining approval for a forest conservation plan that does not strictly conform to the standards and requirements set forth in this Division IV. A VARIANCE MUST BE REQUESTED IN ADVANCE OF APPROVAL OF A FOREST CONSERVATION PLAN AND IN ADVANCE OF ANY ACTIVITY REQUIRING APPROVAL OF A FOREST CONSERVATION PLAN.

§ ~~48-1.~~ {47-2.} When authorized.

Variances from this Division IV may be granted by the Planning Commission, if the applicant demonstrates that enforcement would result in unwarranted hardship to the applicant.

§ ~~48-3.~~ {47-3.} Applications.

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 NEED FOR THE VARIANCE IS NOT AS A RESULT OF A VIOLATION OF ANY PORTION OF DIVISION IV;
- (6) [(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;
- (7) [(6)] verify that the granting of a variance will not adversely affect water quality; and
- (8) [(7)] such other criteria that the Planning Commission may set by rule and regulation.

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**Subtitle ~~{48}~~ 49
Enforcement; Penalties**

§ ~~49-1.~~ {48-1.} HCD to enforce.

This Division IV may be enforced by the Department of Housing and Community Development in the manner provided in § 104 {"Duties and powers of Building Official"} of the Baltimore City Building Code.

§ ~~49-2.~~ {48-2.} Fines.

(a) *Imposition.*

A person found to be in noncompliance with this Division IV, or the regulations adopted thereunder, the forest conservation plan, or the associated 2-year maintenance agreement, shall be fined a penalty of [60¢] \$120,000 per [square foot] ACRE of the area found to be in noncompliance with required forest conservation, OR AT A RATE AS DETERMINED AND ADJUSTED PERIODICALLY BY THE PLANNING COMMISSION AND APPROVED BY THE BOARD OF ESTIMATES.

(b) *Use of funds.*

Money collected under subsection (a) of this section shall be deposited in the Forest Conservation Fund established by the Director of Finance, and may be used by the City for purposes related to implementing this Division IV.

§ ~~49-3.~~ {48-3.} Civil penalties.

(a) *In general.*

In addition, any person who violates any provision of this Division IV or any regulation or order adopted or issued thereunder, is liable for a penalty not exceeding \$1,000 per violation, which may be recovered in a civil action brought by the City.

(b) *Each day a separate offense.*

Each day a violation continues is a separate violation.

§ ~~49-4.~~ {48-4.} Injunctions.

The Department may request the City Solicitor to seek an injunction requiring a person to cease violation of this title and to take corrective action to restore or reforest an area.

SECTION 3. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 4. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th 90th day after the date it is enacted. This Ordinance does not change existing approved plans and their

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1 expiration dates. Fees enacted under this Ordinance will apply to any applicable permit approved
2 on or after the effective date.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City