THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-11-27

LEGISLATIVE HISTORY	
PLANNING COMMISSION PUBLIC HEARING:	**October 10, 2011**
RESOLUTION SUBMITTED TO MAYOR & BOARD:	**October 31, 2011**
MAYOR & BOARD OF ALDERMEN	
WORKSHOP:	**October 5, 2011**
PUBLIC HEARING:	**November 17, 2011**

AN ORDINANCE concerning

Forest Conservation

FOR the purpose of ensuring compliance with current State law and regulations by limiting exemptions 1) for residential construction activity on a single lot or a linear project to a maximum disturbance of 20,000 (instead of 40,000) square feet of forest; 2) for construction of dwelling houses to owners and their children, eliminating authority for an owner's parents and grandchildren; and 3) for areas that were previously developed and covered by paved surface; in addition to, adjusting the fee-in-lieu of forest cost to address inside and outside of the priority funding area; authorizing the use of an off-site protective agreement that applies to forests that are not protected as a mitigation practice for meeting afforestation or reforestation requirements; broadening the acceptable uses of forest conservation funds to include maintenance of existing forests and achieving urban tree canopy goals; requiring that priority be given to specified trees, shrubs, plants, and areas for retention and protection, unless a variance is granted; correcting cross--references; clarifying language; and otherwise pertaining to forest conservation.

BY repealing and reenacting, with amendments,

Section 721
Appendix A, "Land Management Code"
The Code of the City of Frederick, 1966 (as amended)

SECTION 1. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that The Code of the City of Frederick, 1966 (as amended), Appendix A, "Land Management Code", be amended by repealing and reenacting, with amendments, Section 721 as follows:

Sec. 721 FOREST CONSERVATION

(a) Generally

(1) Title

***

(2) Authority

***

(3) Jurisdiction

***

(4) Purpose

***

(5) Definitions

***

(6) Applicability

***

(7) Exemptions

This Section does not apply to:

A. Highway construction activities under Natural Resources Article, Sec. 5-103, Annotated Code of Maryland.

B. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, [Sec. 8-1801-8-1816] **Title 8, Subtitle 18** , Annotated Code of Maryland **including those areas into which Critical Area forest protection measures have been extended under Natural Resources Article Section 5-1602(c), Annotated Code of Maryland.**

C. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and

management program under Tax-Property Article, Sec. 8-211, Annotated Code of Maryland, that are completed on property which:

1. Has not been the subject of application for a grading permit for development within 5 years after the logging or harvesting operation, and

2. Is the subject of a declaration of intent as provided for in subsection (a)(8) of this section, approved by the Planning Department.

D. 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)(8) of this Section which includes:

1. 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

2. A sketch map of the property which shows the area to be cleared.

E. The cutting or clearing of public utility rights-of-way licensed under [Article 78, Sec. 54A and 54B or Sec. 54-I,] **Public Utilities Article, Section 7-204, 7-205, 7-207, or 7-208,** Annotated Code of Maryland, or land for electric generating stations licensed under [Article 78, Sec. 54A and 54B or Sec. 54-I,] **Public Utilities Article, Section 7-204, 7-205, 7-207, or 7-208,** Annotated Code of Maryland, if:

1. Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, Section 5-1603(f), Annotated Code of Maryland; and

2. Cutting or clearing of the forest is conducted to minimize the loss of forest.

F. Routine maintenance or emergency repairs of public utility rights-of-way licensed under [Article 78, Section 54A and 54b or Sec.

54-I,] **Public Utilities Article, Section 7-204, 7-205, 7-207 or 7-208,** Annotated Code of Maryland.

G. Except for a public utility subject to subsection (a)(7)F of this Section, routine maintenance or emergency repairs of a public utility right-of-way if:

1. The right-of-way existed before the effective date of this Section; or

2. The right-of-way's initial construction was approved under this Section.

H. A residential construction activity conducted on an existing single lot of any size, **limited to one single family residence, or a linear project not otherwise exempted under this section** if the activity:

1. Does not result in the cumulative cutting, clearing, or grading of more than [40,000] **20,000** square feet of forest;

2. 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 Section; and

3. Is the subject of a declaration of intent filed with the Planning Department, as provided for in Subsection (a)(8) of this Section 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.

I. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland.

J. Non-coal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland.

K. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a [parent,] child [or a grandchild] of the owner, if the activity:

1. Does not result in the cutting, clearing, or grading of more than [40,000] **20,000** square feet of forest; and

2. Is the subject of a declaration of intent filed with the Planning Department, as provided for in subsection (a)(8) of this Section, which states that transfer of ownership may result in a loss of exemption.

L. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title, or a portion of a lot or parcel, if:

1. The transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and

2. Both the grantor and grantee file a declaration of intent, as provided for in subsection (a)(8) of this Section.

(8) Declaration of Intent

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(b) Administration

(1) Administrative Agencies designated

A. General

***

B. Planning Commission and/or Department

***

C. Engineering Department

***

D. Finance Department
The Finance Department shall administer **[the Frederick City]** **<u>The City of Frederick</u>** Forest Conservation Fund.

(2) General Requirement for Approval of Forest Stand Delineation, Forest Conservation Plan

***

(3) Modifications

A. A person may request a modification to the provisions of this Section or the requirements of the Natural Resource Article Sec. 5-1601 - 5-1612 Annotated Code of Maryland, if the person demonstrates that the enforcement would result in unwarranted hardship to the person.

B. An applicant for a modification shall:

1. Describe the special conditions peculiar to the property, which would cause the unwarranted hardship;

2. Describe how enforcement of this Section will deprive the applicant of rights commonly enjoyed by others in similar areas;

3. Verify that the granting of the modification will not confer on the applicant a special privilege that would be denied to other applicants;

4. Verify that the modification 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, in a neighboring property; and

6. Verify that the granting of a modification will not adversely affect water quality.

[7] [Verify that the developed site is covered by paved surface at the time of application for subdivision plan, grading, or sediment control permit approval.]

C. The appropriate review agency (the Planning Commission, Planning [and Community Development] Department or Engineering Department) shall make findings that the applicant has met the requirements in Subsections A and B of this Section before granting a modification.

D. ***

E. ***

(4) Inspection, Penalties and Enforcement

A. Noncompliance Fees

***

B. Inspections.

The [Building Department] **<u>Department of Public Works</u>** shall require at least four field inspections of a site or individual stand subject to an approved forest conservation plan as follows:

1. The first inspection shall take place before a construction activity begins to determine whether forest protection devices have been installed and conservation areas are clearly marked onsite.

2. The second inspection shall be conducted at the time of planting of the agreed number of trees. Construction log(s) shall be provided to the [Permits and Inspections Department] **Department of Public Works** within seven (7) days after installation of the trees as notification for this inspection and serve to start the maintenance period if the planting is found complete.

3. The third inspection shall take place at the end of the one-year maintenance period. The owner/contractor shall submit a status report to the City prior to the one-year inspection.

4. The fourth inspection shall take place at the end of the 2-year maintenance agreement. The owner/contractor shall submit a status report to the City prior to the two-year inspection.

5. Additional inspections may be requested by the Engineering, [Permits and Inspections] **Public Works** or Planning [and Community Development departments] **Departments** to verify compliance at any time.

6. The owner may request diversion from the approved Final Forest Conservation Plan (Plan) with respect to planting sequence or phasing as long as the following conditions are met:

   a. Planting sites or stands must be identified on an approved Plan;

   b. Selected planting sites or stands may be planted earlier than scheduled;

   c. Planting forest areas later than scheduled requires revised forest conservation plans;

   d. Specified forest areas must have a recorded forest conservation easement agreement;

   e. Specified forest areas must be guaranteed with the City;

f. Must notify the [Permits and Inspections] Department **of Public Works** of request in writing;

g. Must notify the Planning Department of request in writing and receive approval, based on compliance with the Plan phasing and the ability to demonstrate that the flexibility maintains the intent of the approved Plan.

C. Violation

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D. Complaints

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E. Injunctions

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F. Stop Work Order

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G. Revocation

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(5) Amendments

A. The [Frederick City] **City of Frederick** Mayor and Board of Aldermen may amend this Section as may be required according to procedures established by the Charter.

B. ***

(6) Fees

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(7) Frederick City Forest Conservation Fund

A. There is established a Forest Conservation Fund in the City of Frederick.

B. If a person subject to this Section demonstrates that requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person shall contribute money, [at a rate of thirty (30) cents per square foot of the area of required planting,] into the [Frederick] City **of Frederick** Forest Conservation [Fund.] **Fund as follows:**

1. **For a project inside a priority funding area (PFA), as defined in Natural Resources Article Section 5-1610, Annotated Code of Maryland, at a rate of $0.30 per square foot of the area of required planting until September 30, 2014, when the amount shall be adjusted for inflation as determined by the Department of Natural Resources annually by regulation; and**

2. **For a project outside a priority fund area, at a rate of $0.36 per square foot of the area of required planting until September 30, 2014, when the amount shall be 20% higher than the rate established for a project inside a priority funding area.**

C. Money contributed instead of afforestation or reforestation under this article shall be paid at the time of guarantee and approval of improvement plans or at the discretion of the Planning Director.

D. The City shall accomplish the reforestation or afforestation for which the money is deposited within [2] **two** years or three growing seasons, whichever is a greater time period, after receipt of the money.

E. Money deposited in the City forest conservation fund:

1. May be spent on the costs directly related to reforestation and afforestation, including site identification, acquisition, [and preparation;] **preparation, and maintenance of existing forest and achieving urban canopy goals;**

2. Shall be deposited in a separate forest conservation fund; and

3. May not revert to the general fund.

F. Sites for Afforestation or Reforestation Using Fund Money.

1. The reforestation or afforestation requirements under this Section shall occur in the City and watershed areas within the City boundaries in which the project is located.

(8) Guarantee and Public Works Agreements

A. A person or agency (including Frederick County government), required to conduct afforestation or reforestation under this [article] **section**, shall furnish an acceptable financial security/guarantee approved by the City Attorney. The surety shall:

1. Assure that the afforestation, reforestation, protection devices, and the associated maintenance agreement are conducted and maintained in accordance with the approved final forest conservation plan;

2. Be in an amount equal to 115 percent of the estimated cost, as determined by the Engineering Department, of afforestation and reforestation; and

3. Be in a form and of a content approved by the City.

B. ***

C. ***

D. ***

E. ***

(9) Annual Report and Biennial Review

A. On or before March 1 of each year, the City [of Frederick] shall submit to the Maryland Department of Environment a report [on] **which contains**:

1. the number, location, and type of projects subject to the provisions of this Section;

2. the amount and location of acres cleared, conserved, and planted, **including any areas located in the 100 year floodplain,** in connection with a development project;

3. the amount of reforestation and afforestation fees and noncompliance penalties collected and expended; [and]

4. the costs of implementing the Forest Conservation [Program.] **Program;**

5. **the number, location, and type of violations and type of enforcement activities conducted; and**

6. **the size and location of all conserved and planted forest areas in an electronic geographic information system or computer aided design format where possible. If not possible, the location shall be given by Maryland State Plane Grid Coordinates and 8 digit subwatershed.**

B. ***

C. ***

(c) Plan Requirements

(1) Plans in General

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(2) Forest Stand Delineations

***

(3) Forest Conservation Plan – General Requirements

A. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.

B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the approving authority:

1. How techniques for forest retention have been exhausted;

2. Why the priority forests and priority areas specified in Natural Resources Article, Sec. [5-1607(c)] **5-1604(c)(1),** Annotated Code of Maryland, cannot be left in an undisturbed [condition;] **condition:**

[3.] **a.** If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland; and

[4.] **b.** [Where afforestation or reforestation will occur on site in priority areas, the applicant shall comply with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland] **Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article Section 5-1607, Annotated Code of Maryland; and**

c. **How the disturbance to the priority forest and priority areas specified in Natural Resources Article Section 5-1607(c)(2), Annotated Code of Maryland, qualifies for a modification.**

C. The applicant shall demonstrate to the satisfaction of the approving authority that the requirements for afforestation or reforestation on-site or off-site cannot be reasonably accomplished if the applicant proposed to make a payment into the local forest conservation fund instead of afforestation or reforestation.

D. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, [Section 5-901 – 5-911,] **Title 9,** Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory requirements and the requirements of this law, subject to the following:

1. **Any** area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted towards forest conservation requirements under this law.

2. For the purpose of calculating reforestation mitigation under this Section, a forested nontidal wetland, [75% of champion size tree, and/or specimen tree]permitted to be cut or cleared and required to be mitigated under Environment Article, [Section 5-901 – 5-911] **Title 9,** Annotated Code of Maryland, shall be shown on the forest conservation plan and subtracted on an acre for acre basis [and/or square footage crown size of specimen trees at 20 year growth] from the total amount of forest to be cut or cleared as part of a regulated activity.

3. Nontidal wetlands shall be considered to be priority areas for forest retention and replacement.

4. Forested nontidal 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 nontidal wetlands and to avoid delay in the approval process.

(4) Preliminary Forest Conservation Plan

A. A preliminary forest conservation plan shall:

1. Be submitted as required by subsection (c)(1)B of this Section.

2. Include the approved forest stand delineation for the site;

3. Include a table that lists the proposed values of the following, in square feet:

   a. Net tract area,

   b. Existing, cleared, and retained forest areas,

   c. Area of forest conservation required, and

   d. Area of forest conservation that the applicant proposes to provide, including both on-site and off-site areas.

4. Include a clear graphic indication of the forest conservation provided on the site drawn to scale, showing areas where clearing and retention of existing forest and specimen trees, or afforestation or reforestation is proposed, and FSD requirements;

5. Include an explanation of how the provisions of subsection (c)(3) of this Section have been met;

6. In the case of afforestation or reforestation include a proposed afforestation or reforestation [plan;] **plan with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;**

7. Include a proposed construction timetable showing the sequence of forest conservation procedures;

8. Show the proposed limits of disturbance;

9. Show existing and proposed utility easements and storm water management [areas;;] **areas;**

10. Incorporate 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 [including;] **including:**

a. Watering, and
b. A reinforcement planting provision if survival rates fall below required standards, as stipulated in the final forest conservation plan;

11. Show proposed locations and types of protective devices to be used during construction activities to protect specimen trees and forests designated for conservation;

[12.] [In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;]

[13]**12.** Include statement for proposed long-term agreement;

[14]**13.** Include [planting schedule, phases, and species] **maintenance** table;

[15]**14.** Include information required in the Forest Conservation Technical Manual; and

[16]**15.** Include other information the approving authority determines is necessary to implement this Section.

[17]**16.** If a site has a history of agricultural activity (by definition in this Ordinance), the Department of Agriculture must be contacted to determine if the site has a history of noxious weeds.

a. If determined positive, the Planting and Maintenance procedures for this plan shall include recommendations from the Department of Agriculture to appropriately control the problem for future planting sites.
b. If determined negative, a letter from the Department of Agriculture shall be provided confirming this fact.

B. ***

C. ***

D. ***

(5) Final Forest Conservation Plan

A. A final forest conservation plan shall:

1. Be submitted as required by **[**(c)(2)B**]** **<u>(c)(1)</u>** of this Section;

2. Include the substantive elements required under (c)(4)A. of this Section, as finalized elements of the forest conservation plan;

3. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;

4. Incorporate a binding two (2)-year maintenance (short-term) agreement containing at a minimum the provisions specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;

5. Incorporate a long-term binding protective agreement containing at a minimum the provisions specified in COMAR 08.19.05.02 that provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and 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. Within 30 days of execution, **[**an**]** **<u>the</u>** applicant shall record a legally binding protective agreement in the local land record office in the county where the project is located;

6. Show temporary or permanent stockpile areas;

7. Include a statement for the financial security obligation. Security/guarantee is required at the time of submitting the public works guarantees for the Improvement Plans, or at the time of plat recordation if there are no associated improvement plans and;

8. Include other information the Planning Department or Engineering Department determines is necessary to implement this Section.

9. Provide a note stating that protective devices shall be removed prior to release of full guarantee in accordance with [(b)(8)C.] **subsection (b)(8)D** of this Section.

B. Time for Submittal of Final Forest Conservation Plan

1. Within forty-five (45) calendar days after receipt of the final forest conservation plan, the [Planning Department or Engineering Department] **approving authority** shall notify the applicant whether the forest conservation plan is complete and approved.

2. If the [Planning Department or Engineering Department] **approving authority** fails to notify the applicant within forty-five (45) calendar days, the plan shall be treated as complete and approved.

3. The [Planning Department or Engineering Department] **approving authority** may require further information or extend the deadline for an additional fifteen (15) calendar days under extenuating circumstances.

4. At the request of the applicant, the [Planning Department or Engineering Department] **approving authority** may extend the deadline under extenuating circumstances.

C. ***

(d) Forest Conservation Standards

(1) 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 approving authority that reasonable efforts have been made to protect them and the plan cannot be reasonably altered:

A. Trees, shrubs, and plants located in sensitive areas including the one hundred (100)-year floodplain, intermittent and perennial streams and their buffers, steep slopes, nontidal wetlands, and critical habitats:

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

(2) **Retention Priority -- Modifications**

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 approving authority that the applicant qualifies for a modification in accordance with Section 721(b)(3) of this Code:

[C.] 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. Sec. 1531--1544 and in 50 CFR Part 17,

2. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, Sec. 10-2A-01--10-2A-09, Annotated Code of Maryland, and

3. COMAR 08.03.08;

[D.] B. Trees that:

1. Are part of a historic site,

2. Are associated with a historic structure, or

3. Have been designated by the State or the Department as a National, State, or county champion tree; and

[E.] C. Any tree having a diameter measured at 4.5 feet above the ground of:

1. twenty-five (25) inches or more as specimen tree; or

2. seventy-five (75) percent or more of the diameter, measured at four and one half (4.5) feet above the ground, of the current State champion tree of that species as designated by the Department of Natural Resources.

[(2)] (3) Afforestation and Afforestation Threshold

A person making application after the effective date of this Section for subdivision, site plan or project plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater, shall:

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

1. A tract having less than twenty (20) percent of the net tract area in forest cover shall be afforested up to at least twenty (20) percent of the net tract area for the following land use categories:

(i) Agriculture and resource areas, and

(ii) Medium density residential areas;

2. A tract with less than fifteen (15) percent of its net tract area in forest cover shall be afforested up to at least fifteen (15) percent of the net tract area for the following land use categories:

(i) Institutional development areas,

(ii) High density residential areas,

(iii) Mixed use and planned unit development areas, and

(iv) Commercial and industrial use areas;

B. Conduct afforestation off site in accordance with the following:

1. All required forest plans shall be prepared for the site and submitted for approvals;

2. The site shall be planted 1:1 ratio of the on-site planting requirement.

C. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in

subsection [(d)(2)A.1 and 2] **(d)(3)(A)(1) and (d)(3)(A)(2)** of this Section.

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 two (2) to one (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.

[(3)] (4) Reforestation and Conservation Threshold

A. There is a forest conservation threshold established for all land categories, as provided in [(d)(3)B] **subsection (d)(4)(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. After reasonable efforts to minimize the cutting or clearing of trees and forest have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the forest conservation fund, according to the formula set forth in Subsection [(d)(3) B and C] **(d)(4)(B) and subsection (d)(4)(C)** of this Section and consistent with [Section (d)(5)] **subsection (d)(6)** of this Section, and the following forest conservation thresholds for the land use category:

Category of Use	Threshold Percentage
Agricultural and resource areas	50 percent
Medium density residential areas	25 percent
Institutional development uses	20 percent
High density residential areas	20 percent
Mixed use and Master Planned development areas	15 percent

Commercial and industrial use areas	15 percent

C. Calculations.

1. For all existing forest cover measured to the nearest 1/10th 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 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 criteria provided in **[**(d)(5)**]** **subsection (d)(6)** of this Section.

3. For all existing forest cover measured to the nearest 1/10th 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 (2) acre planted for each acre removed below the threshold.

4. For forest to be planted off site, the area shall be afforested at a 1:1 ratio for each acre required for planting on site.

[(4)](5) **Afforestation, Reforestation Options**

A. After techniques for retaining existing forest on the site have been exhausted, the options for afforestation and reforestation, are in priority order as follows:

1. On-site afforestation or reforestation, using:

   a. whip and seedling stock; or

   b. if economically feasible, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;

2. Selective clearing and supplemental planting on site;

3. Off-site afforestation or reforestation, using:

a. transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground; or

b. Off-site afforestation or reforestation, using whip and seedling stock;

4. Landscaping of areas under an approved landscaping plan which establishes a forest that is at least thirty five (35) feet wide and covering 10,000 square feet or more of area or other landscaping as provided for in subsection [(d)(5)F.] **(d)(6)(F).**

5. Street trees with a mature canopy coverage may be granted full credit as a mitigation technique;

6. Acquisition of an off-site protection easement on existing forested areas within the City boundaries not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest covered protected;

[5] **7.** Natural regeneration on site must be documented for viability and approved by staff**;**

[6] **8.** Natural regeneration off-site on another applicant's property proven viable and at the 1:1 off-site ratio; **and**

[7] **9.** Payment into the [Frederick] City **of Frederick** Forest Conservation Fund as provided for by subsection [(b)(6)B] **(b)(7)B** of this Section.

B. ***

[(5)] (6) Miscellaneous Provisions: Location, Recommended Species, Timing, Tree Protection, Landscaping Credit

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SECTION 2. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

SECTION 3. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that this ordinance shall take effect on

November 27, 2011,, and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

NOTE: **[**Bold Brackets**]** indicate material deleted
Underlining indicates material added
*** indicates no change

APPROVED: November 17, 2011

RANDY MCCLEMENT, Mayor

PASSED: November 17, 2011

RANDY MCCLEMENT, President, Board of Aldermen

Approved for Legal Sufficiency:

Legal Department