

ARTICLE XVIII SCREENING, SHADING, FOREST CONSERVATION AND ENVIRONMENTAL STANDARDS

Part I Buffers

Section 1. Purpose

1. One of zoning's most important functions is the division of land uses into districts which have similar character and contain compatible uses. All uses permitted in any district have generally similar nuisance characteristics. Bufferyards will operate to minimize the negative impact of any future use on neighboring uses.
2. The bufferyard is a combination of setback and a visual buffer or barrier and is a yard or area together with the planting required thereon. Both the amount of land and the type and amount of planting specified for each bufferyard requirement of this Ordinance are specified and are designed to ameliorate nuisances between adjacent zoning districts to ensure a desired character along public streets and roads. The planting units required of bufferyards have been calculated to ensure that they do, in fact, function as "buffers."
3. Bufferyards shall be required to separate different zoning districts from each other in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions. Mature woodlands are considered the best buffers and should be used whenever possible.

Section 2. Location of Bufferyards

Bufferyards shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line. Bufferyards shall not be located on any portion of an existing or dedicated public or private street or right-of-way. Bufferyards shall not be located within a yard required in a single family attached (townhouse) development or planned unit development.

Section 3. Determination of Required Bufferyard

To determine the type of bufferyard required on a parcel or between two parcels or between a parcel and a street, the following procedure shall be used:

1. Identify whether any portion or property line of the site constitutes a zoning district boundary. If it does, determine the zoning on both sides of the property.
2. Determine whether the land on the adjoining property is vacant or developed or whether a plat of the subdivision has been approved.
3. Classify any street adjacent to the proposed use as a local, collector, or arterial street.
4. Determine the bufferyard required on each boundary (or segment thereof) of the subject parcel by referring to the Tables of Required Bufferyards.
5. Determine if the proposed development is a use which has bufferyards required to separate that use from certain uses. Then determine the bufferyard required between such uses by referring to the Tables of Required Bufferyards.

Section 4. Responsibility for Bufferyards

1. When a proposed use adjoins a vacant parcel for which a bufferyard is required by the presence of a zoning boundary, that use shall at the time of development provide one-half (0.5) of the buffer which is required by the Tables of Required Bufferyards.
2. The second use to develop shall, at the time it develops, provide all additional plant material and/or land necessary to provide the total bufferyard required between those two (2) uses. If the adjoining use had developed without a bufferyard, the second use will be responsible for installing the total bufferyard.
3. Existing plant material and/or land located on the preexisting (first developed) land use which meets the requirements of this Ordinance may be counted as contributing to the total bufferyard required between it and the second (adjacent) land use to develop.

Section 5. Tables of Required Bufferyards

REQUIRED BUFFERYARDS BETWEEN ADJACENT ZONING DISTRICTS												
ZONE	RP	R-1	R-2	R-3	TC	RO	C-1	C-2	C-3	BI	PUD	B-P
RP	--	B	B	B	B	B	C	D	E	E	C	E
R-1	B	--	B	B	B	B	C	D	E	E	C	E
R-2	B	B	--	C	B	B	C	D	E	E	B	E
R-3	B	B	C	--	B	B	C	D	E	E	B	E
TC	B	B	B	B	--	B	B	C	C	D	D	D
RO	B	B	B	B	B	--	B	C	D	E	B	E
C-1	C	C	C	C	B	B	--	B	D	B	B	B
C-2	D	D	D	D	C	C	B	--	C	B	D	B
C-3	E	E	E	E	C	D	C	C	--	B	D	B
BI	E	E	E	E	D	E	B	B	B	--	E	B
PUD	C	C	B	B	D	B	B	D	D	E	--	D
B-P	E	E	E	E	D	E	B	B	B	B	D	--

REQUIRED STREET BUFFERS	FUNCTIONAL CLASSIFICATION		
ZONING DISTRICTS	ARTERIAL	COLLECTOR	LOCAL
RP, R-1, R-2, R-3, TC, PUD	D	C	B
RO, C-1	B	B	B
C-2, C-3	C	C	C
BI, B-P	C	C	D
TC	SEE SECTION XX		

Section 6. Bufferyard Requirements

Illustrations graphically indicating the specification of each bufferyard are contained in Appendix C.

Section 7. Bufferyard Use

A bufferyard may be used for passive recreation or stormwater management. It may contain pedestrian, bike, or equestrian trails provided that: (a) no plant material is eliminated, (b) the total width of the bufferyard is maintained, and (c) all other regulations of the Ordinance are met. (d) In no event, however, shall swimming pools, tennis courts or other such uses be permitted in bufferyards. The Planning Commission may allow substitution or reduction of the bufferyard if it finds that the required bufferyard will obstruct the view of a driver or that the bufferyard is incompatible with the existing streetscape.

Section 8. Ownership of Bufferyards

Bufferyards may remain in the ownership of the original developer (and assigns) of a land use, or they may be subjected to deed restrictions and subsequently be freely conveyed, or they may be transferred to any consenting grantees, such as adjoining landowners or the Town of Elkton provided that any such conveyance adequately guarantees the protection of the bufferyards for the purposes of this Ordinance.

Section 9. Bufferyards Which Exceed Minimum Requirements

Where the bufferyard required between a land use and vacant land turns out to be greater than that bufferyard which is required between the first use and the subsequently developed use, the following options apply:

1. The subsequent use may provide one half (0.5) of the buffer required by this Section. The existing use may expand its use into the original buffer area, provided that the resulting total bufferyard between the two uses meets the bufferyard requirements of this Section.
2. The existing use may enter into agreements with abutting landowners to use its existing buffer to provide some or all of the required bufferyard of both land uses. The total buffer shall equal the requirements of this Section. Provided that such an agreement can be negotiated, the initial use may provide the second use some or all of its required bufferyard and/or extra land on which it might develop. The existing use may reduce its excess buffer by transferring part or all of the excess buffer to the adjoining landowner to serve as its buffer. Any remaining excess buffer area may be used by the existing use for

expansion of that use or for transfer by it to the adjoining landowner to expand that adjoining use.

3. Any such arrangement as defined in Sections 1 and 2 above, shall be clearly indicated on a site plan and shall be accompanied by legal documents as may be required by the Planning Commission.

Section 10. Contractual Reduction of Bufferyards

When a land use is proposed adjacent to vacant land, and the owner of that vacant land enters into a contractual relationship with the owner of the land that is to be developed first, a reduced buffer may be provided by that first use, provided that: the contract contains a statement by the owner of the vacant land of an intent to develop at no greater than a specified land use intensity class; and an agreement by that vacant landowner to assume all responsibility for additional buffer, if needed by the subsequent development of a less intense use than had been agreed upon, is transferred to the owner of the vacant (second in time to be developed) land. Any such arrangement to reduce bufferyards as described above, shall be clearly indicated on a site plan and shall be accompanied by legal documents as may be required by the Planning Commission.

Section 11. Financial Surety and Maintenance of Bufferyards

1. The requirements for posting a financial surety and the procedures for partial release and final release of financial sureties for bufferyards, shall be the same as for afforestation or reforestation as defined in Part III, Section 12 of this Article.
2. The requirement to install bufferyards as defined in this section is an integral part of the implementation of this Ordinance and the Comprehensive Plan. Continued maintenance of the bufferyards is essential in assuring that the intent of this Ordinance is continually met. Once the financial surety has been released, failure to properly maintain the bufferyard shall be deemed a violation per Article VII of this Ordinance.

Part II Shading

Section 1. Town Findings and Declaration of Policy: Shade Trees

1. The Town finds that:
 - a. Trees are proven producers of oxygen, a necessary element for human survival,
 - b. Trees appreciably reduce the ever increasing environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air we breathe,
 - c. Trees transpire considerable amounts of water each day and thereby purify the air much like the air-washer devices used on commercial air conditioning systems,
 - d. Trees have an important role in neutralizing waste water passing through the ground from the surface to ground water tables and lower aquifers,

- e. Trees, through their root systems, stabilize the ground water tables and play an important and effective part in soil conservation, erosion control, and flood control,
 - f. Trees are an invaluable physical, aesthetic, and psychological counterpoint to the urban setting, making urban life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare, and breaking the monotony of human developments on the land, particularly parking areas, and
 - g. For the reasons indicated herein, trees have an important impact on the desirability of land and therefore on property values.
2. Based upon the findings set forth in Subsection 1., the Town declares that it is not only desirable but essential to the health, safety, and welfare of all persons living or working within the Town's planning jurisdiction to protect certain existing trees and, under the circumstances set forth in this article, to require the planting of new trees in certain types of developments.

Section 2. Required Trees Along Dedicated Streets

Along both sides of all newly created streets that are constructed in accordance with the Elkton street standards, the developer shall at a minimum either plant or retain sufficient trees so that between the paved portion of the street and a line running parallel to and fifty (50) feet from the centerline of the street, there is for every thirty-five (35) feet of street frontage at least an average of one deciduous tree that has or will have when fully mature a trunk at least twelve (12) inches in diameter. When trees are planted by the developer pursuant to this section, the developer shall choose trees that meet the standards set forth in Appendix B.

Section 3. Tree Protection

The following regulations supplement, but do not supersede the Forest Conservation Ordinance adopted by the Town of Elkton on December 22, 1992 and as amended. (See Article XVIII, Part III)

1. Development of land for different uses and intensity of uses will often times necessitate the removal of trees to accommodate roads, parking, buildings, and facilities. It is the expressed intent of this ordinance that every effort be made through the design, layout, and construction of development projects to incorporate and save as many trees as possible.
2. No person shall cut, destroy, move, or remove any living, disease-free tree of any species having a trunk with a diameter of eight (8) inches or larger, in conjunction with any development of land governed by this ordinance unless and until such removal or destruction has been approved under the provisions of this ordinance. Trunk diameter is measured 4.5 feet above the ground, and is referred to as "diameter breast height (dbh)".
3. No person shall cut or clear land of trees for the sole purpose of offering land for sale.
4. The clear-cutting of trees is prohibited. The term "clear-cutting" as used herein shall mean the cutting of more than 75 percent of the trees six inches in trunk diameter or larger. Clear-cutting pursuant to an approved development plan shall require the planting

of replacement trees as indicated in the detailed landscape plan accompanying the development application.

5. A survey of all trees of applicable size shall be made and submitted in conjunction with the development site layout. All trees proposed for removal shall be clearly noted. The tree survey shall be certified by either a registered land surveyor, registered engineer, or registered landscape architect.
6. The requirement for a tree survey is waived in the case of golf course construction or when preliminary site evaluation reveals the ability to accomplish the proposed project without removal of any trees eight (8) inches in diameter or larger. In the latter case, the applicant shall submit a written statement that no trees will be removed, and his permit will indicate No Tree Removal as a condition thereof.
7. Removal of endangered or valued trees will not normally be permitted. Trees included in this category are:
 - American Elm (*Ulmus americana*)
 - American Holly (*Ilex opaca*)
 - Bald Cypress (*Taxodium distichum*)
 - Pecan (*Carya illinoensis*)
 - Southern Magnolia (*Magnolia Grandiflora*)
 - American Chestnut (*Castanea Dentata*)
8. Considerable damage to or the death of trees may result if more than six (6) inches of soil is added around the base of a tree, more than 30 percent of circumferential bark is removed, or more than 30 percent of the root system is removed. In addition, asphalt paving, building construction, and soil compaction too close to trees may cause their destruction. Accordingly, it shall be the responsibility of the developer to institute alternative site designs to assure the best chance of tree survival whenever these criteria cannot be adhered to.
9. Those trees designated for preservation in accordance with the provisions of this ordinance as shown on the approved landscape plan shall be marked with bright blue ribbons encircling the tree trunk at a height of four (4) feet above the ground, and a four (4)-foot high barricade will be constructed around the tree at the drip line prior to the start of construction.
10. As a condition of approval under this ordinance, the applicant may be required to plant replacement trees for trees approved for removal as part of the final plan. In requiring replacement trees, the following will be considered:
 - a. the intended use of the property;
 - b. the existing or pre-development tree coverage, sizes, and types;
 - c. the number, size, type, and location of natural trees proposed for preservation by the applicant;
 - d. the grading, road, building, parking, and drainage requirements.

- e. Conformance with other provisions of this Ordinance.

Section 4. Retention and Protection of Large Trees

1. Every development shall retain all existing trees eighteen (18) inches in diameter or more unless the retention of such trees would unreasonably burden the development.
2. No excavation or other subsurface disturbance may be undertaken within the drip line of any tree eighteen (18) inches in diameter or more, and no impervious surface (including, but not limited to, paving or buildings) may be located within twelve and one-half (12 ½) feet (measured from the center of the trunk) of any tree eighteen (18) inches in diameter or more unless compliance with this subsection would unreasonably burden the development. For purposes of this subsection, a drip line is defined as a perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground.
3. The retention or protection of trees eighteen (18) inches in diameter or more as provided in Subsections 1. and 2. unreasonably burdens a developer if, to accomplish such retention or protection, the desired location of improvements on a lot or the proposed activities on a lot would have to be substantially altered and such alteration would work an unreasonable hardship upon the developer.
4. If space that would otherwise be devoted to parking cannot be so used because of the requirements of Subsections 1. or 2., and, as a result, the parking requirements set forth in Article XVII cannot be satisfied, the number of required spaces may be reduced by the number of spaces "lost" because of the provisions of Subsections 1. and 2., up to a maximum of fifteen (15) percent of the required spaces.

Section 5. Shade Trees in Parking Areas

1. Vehicle accommodation areas that are required to be paved must be shaded by deciduous trees (either retained or planted by the developer) that have or will have when fully mature a trunk at least twelve (12) inches in diameter. When trees are planted by the developer to satisfy the requirements of this subsection, the developer shall choose trees that meet the standards set forth in Appendix B.
2. Each tree of the type described in Subsection 1. shall be presumed to shade a circular area having a radius of fifteen (15) feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, twenty (20) percent of the vehicle accommodation area will be shaded.
3. No paving may be placed within twelve and one-half feet (12 ½) feet (measured from the center of the trunk) of any tree retained to comply with Subsection 1., and new trees planted to comply with Subsection 1. shall be located so that they are surrounded by at least 200 square feet of unpaved area.
4. Vehicle accommodation areas shall be laid out and detailed to prevent vehicles from striking trees. Vehicles will be presumed to have a body overhang of three (3) feet, six (6) inches.

Part III Forest Conservation

Section 1. Purpose

The Town of Elkton has determined that to meet the requirements of Natural Resources Article, Section 5-1601--5-1612, Annotated Code of Maryland, the provisions of this Ordinance must be enacted. The Town of Elkton Policy Document, the State Forest Conservation Manual, and all other documents, ordinances, regulations, procedures and their articles, sections and chapters are incorporated herein by reference.

Section 2. Definitions

Within this Part the following words have the meanings as indicated.

Afforestation means:

- a. Establishment of a forest on an area from which forest cover has been absent for a long period of time;
- b. Planting of open areas which are not presently in forest cover; or
- c. Establishment of a forest according to procedures set forth in the Forest Conservation Manual.
- d. The creation of a biological community dominated by trees and other woody plants at a density of at least one hundred (100) trees per acre with at least 50% of those trees having the capability of growing to a diameter of two (2) inches or more within seven (7) years.

Agricultural Activity. Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations) the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.

Agricultural and Resource Areas. Undeveloped areas designated or regulated for densities of less than or equal to one dwelling unit per two (2) acres.

Applicant. A person who is applying for subdivision, site plan or project plan approval or a grading or sediment control permit, or who has received approval of a forest stand delineation or forest conservation plan.

Approved Forest Management Plan. A document:

- a. Approved by the Department of Natural Resources forester assigned to the county in which the property is located; and,
- b. Which operates as a protective agreement for forest conservation as described in the Natural Resources Article, Sections 5-1607 (e)--(f), Annotated Code of Maryland.

Caliper. The diameter measured at two (2) inches above the root collar.

Champion Tree. The largest tree of its species within the United States, the state, the county, or municipality, as appropriate.

Champion Tree of the State. A tree which appears in the State Forest Conservation Manual list of State champion trees.

Commercial and Industrial Uses. Those uses allowed under the commercial and industrial zoning categories of the Town of Elkton Zoning Ordinance, and includes manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding and parking areas.

Commercial Logging or Timber Harvesting Operations. The cutting and removing of tree stems from a site for commercial purposes, leaving the root mass in tact.

Critical Habitat Area. A critical habitat for endangered species and its surrounding protection area. A critical habitat area shall:

- a. Be likely to contribute to the long-term survival of the species;
- b. Be likely to be occupied by the species for the foreseeable future; and
- c. Constitute habitat of the species which is considered critical under Natural Resources Article, § 4-2A-04 and § 10-2A-06, Annotated Code of Maryland.

Critical Habitat for Endangered Species. A habitat occupied by an endangered species as determined or listed under §10-2A-04 of the Natural Resources Article.

Declaration of Intent.

- a. A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property:
 - (1) Is for certain activities exempted under this ordinance or Natural Resources Article, §5-103 and 5-1601--5-1612, Annotated Code of Maryland, and
 - (2) Does not circumvent the requirements of this ordinance or Natural Resources Article, §5-103 and 5-1601--5-1612, Annotated Code of Maryland, and
 - (3) Does not conflict with the purposes of any other declaration of intent; and
- b. The document required under COMAR 08.19.01.05 and Section 308.3 of this Ordinance.

Department. The Town of Elkton Planning Department.

Development Project.

- a. "Development project" means the grading or construction activities occurring on a specific tract that is 40,000 square feet or greater.
- b. "Development project" includes redevelopment.

Development Project Completion. The purposes of afforestation, reforestation, or payment into the Town of Elkton Forest Conservation Fund:

- a. The release of the development bond, if required;
- b. Acceptance of the project's streets, utilities, and public services by the Town of Elkton; or
- c. Designation by the Department that a:
 - (1) Development project has been completed, or
 - (2) Particular stage of a staged development project, including a planned unit development, has been completed.

Forest.

- a. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.
- b. "Forest" includes:
 - (1) Areas that have at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having a 2- inch or greater diameter at four and one-half (4.5) feet above the ground and larger; and
 - (2) Forested areas that have been cut but not cleared.
- c. "Forest" does not include orchards.

Forest Conservancy District Board. The forestry board created for each State forestry conservancy district under Natural Resources Article, Sections 5-601--5-610, Annotated Code of Maryland.

Forest Conservation. The retention of existing forest or the creation of new forests at the levels prescribed by the state or Town of Elkton.

Forest Conservation and Management Agreement. An agreement as stated in the Tax-Property Article, § 8-211, Annotated Code of Maryland.

Forest Conservation Manual. The State of Maryland Department of Natural Resources Forest Conservation Manual as published on December 1991 and as amended. This manual is incorporated herein by reference, excluding the State Policy Document, and used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

Forest Conservation Plan. A plan designed to protect or reestablish forest cover existing on net tract area and approved pursuant to Natural Resources Article, § 5-1605 and 5-1607, Annotated Code of Maryland and Section 6 of this Part.

Forest Conservation Program. The Elkton Forest Conservation Program developed and implemented pursuant to § 5-1604 of the Natural Resources Article.

Forest Cover. The area of a site meeting the definition of forest.

Forested Slopes. An area meeting the definition of forest and growing on an area with a slope of 25 percent or more and covering an area of at least 10,000 square feet.

Forest Management Plan. A plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

Forest Mitigation Banking. The intentional restoration or creation of forest undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits for future activities.

Forest Stand Delineation. The methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Forest Conservation Manual.

Growing Season. The period of consecutive frost-free days as stated in the current soil survey for Cecil County published by the National Cooperative Soil Survey Program, 16 U.S.C. Section 590 (a)--(f).

High Density Residential Areas. Areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, in conformance to the Town of Elkton Zoning Ordinance.

Institutional Development Area. Schools, colleges, and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks and cemeteries.

Intermittent Stream. A stream in which surface water is absent during a portion of the year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

Landscaping Plan. A plan:

- a. Drawn to scale, showing dimensions and details for reforesting an area at least thirty-five (35) feet wide and covering 2,500 square feet or greater in size;
- b. Using native or indigenous plants when appropriate; and
- c. Which is made part of an approved forest conservation plan.

Linear Project. A project which:

- a. Is elongated with nearly parallel sides;
- b. Is used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles; and
- c. May traverse fee simple properties through defined boundaries, or established easement rights.

Local Agency. Each unit in the executive, legislative or judicial branch of a county or municipal government, including an office or department of public works.

Lot. A unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by Natural Resources Article Section 5-1601, Annotated Code of Maryland and this Ordinance without an approved forest stand delineation and forest conservation plan.

Maintenance Agreement. The short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, Section 5-1605, Annotated Code of Maryland and this ordinance.

Minor Development Project. A project on less than five (5) acres of land containing not more than four (4) lots per acre.

Mixed Use Development. A single, relatively high density development project, usually commercial in nature, which includes two (2) or more types of uses and is permitted by the Town of Elkton Zoning Ordinance.

Natural Regeneration. The natural establishment of trees and other vegetation with at least four hundred (400) woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least twenty (20) feet at maturity.

Net Tract Area. Except in agriculture and resource areas or linear project areas, the total area of a site, including both forested and non-forested areas, to the nearest one-tenth acre, reduced by the area where forest clearing is restricted by another local ordinance or program; in agriculture and resource areas, the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area where forest clearing is restricted by another local ordinance or programs.

For a linear project:

- a. The area of a right-of-way width, new access roads, and storage; or
- b. The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

Nontidal Wetland. An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a

prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

The determination of whether an area is considered a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended and interpreted by the U. S. Environmental Protection Agency.

Nontidal Wetlands do not include tidal wetlands regulated under Title 16 of the Environmental Article.

Offsite. Area outside the limits of the area encompassed by the tract.

Onsite. Area within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain.

100-year Flood. A flood which has a one (1) percent chance of being equaled or exceeded in any given year.

100-year Floodplain. An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwater during a 100-year frequency storm event, or a 100-year flood. Except for Class III waters (natural trout streams), a body of water with a watershed less than four hundred (400) acres is excluded.

Perennial Stream. A stream containing surface water throughout an average rainfall year as shown on the most recent 7.5 minute topographic quadrangle published by the United States Geologic Survey as confirmed by field verification.

Person. The federal government, the State, a county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

Planned Unit Development. A form of development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan and unified site design that provides flexibility in land use design approved by the Town of Elkton with at least twenty (20) percent of the land permanently dedicated to open space and is developed in accordance with Planned Unit Development requirements set forth in the Town of Elkton Zoning Ordinance and Subdivision Regulations.

Project Plan. A construction, grading or sediment control activity on an area of 40,000 square feet or greater by a local agency.

Public Utility. Means any:

- a. Transmission line or electric generating station; or
- b. Water, sewer, electric, gas, telephone, or television cable service line.

Reforestation or Reforested.

Means the:

- a. Creation of a biological community dominated by trees and other woody plants containing at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within seven (7) years; or
- b. Establishment of a forest according to procedures set forth in the Forest Conservation Manual.
- c. Reforestation or reforested includes landscaping of areas under an approved landscaping plan establishing a forest at least thirty-five (35) feet wide and covering 2500 square feet or more of area.

Regulated Activity. Any of the following activities when that activity occurs on a unit of land which is 40,000 square feet or greater;

- a. Subdivision;
- b. Grading;
- c. An activity that requires a sediment control permit; or
- d. Project plan of a local agency;
- e. Site plan.

Retention. The deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the Forest Conservation Manual.

Sediment Control Permit. The authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland.

Seedlings. An unbranched woody plant, less than twenty-four (24) inches in height and having a diameter of less than one-half (½) inch measured at two (2) inches above the root collar.

Selective Clearing. The careful and planned removal of trees, shrubs, and plants using specific standards and protection measures as set forth under an approved forest conservation plan.

Stream Buffer. All lands lying within one hundred feet (100) feet measured from the top of each normal bank of a perennial or fifty (50) feet from an intermittent stream.

Subdivision. Any division of a unit of land into two or more lots parcels for the purpose, whether immediate or future, of transfer of ownership, lease, sale or development.

Timber Harvesting.

- a. "Timber harvesting" means a tree cutting operation affecting one (1) or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor.
- b. "Timber harvesting" does not include grubbing and clearing of root mass.

Tract. Property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, site plan approval, project plan approval, or areas subject to this law. If property included in a Planned Unit Development "tract" means the entire property subject to the Planned Unit Development.

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

Variance.

- a. "Variance" means relief from Natural Resources Article Sections 5-1601 -- 5-1612, Annotated Code of Maryland, or this Ordinance.
- b. "Variance" for the purpose of Part III of this Article does not mean a zoning variance.

Watershed. All land lying within an area described as a sub-basin in water quality regulations adopted by the Department of Environment under COMAR 26.08.02.08.

Whip. An unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch in caliper measured at 2 inches above the root collar.

Section 3. Application

- 1. Except as provided in subsection 2. of this Section, this Part applies to:
 - a. A person making application for a subdivision, site plan approval, project plan, grading or sediment control approval on units of land 40,000 square feet or greater after the effective date of this Part.
 - b. A public utility not exempt under subsection 2. e and f of this Section.
 - c. A unit of the state, county or municipal government, including a public utility or public works project, making application for subdivision, project plan, grading or sediment control approval on areas 40,000 square feet or greater.
- 2. This Part does not apply to:
 - a. Highway construction activities under Natural Resources Article, Section 5-103, Annotated Code of Maryland.
 - b. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, Section 8-1801--8-1816, 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, Section 8-211, Annotated Code of Maryland, that are completed:
 - (1) Before July 1, 1991; or
 - (2) After July 1, 1991 on property which:
 - (a) Is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation. However, after this 5 year period the property shall be subject to this Ordinance; and
 - (b) Is the subject of a declaration of intent as provided for in Section 3.3 of this Part, approved by the Department.
- d. Agricultural activities not resulting in a change in land use category, including agricultural support buildings and other related structures built using best management practices, provided less than 20,000 square feet of forest is disturbed. An agricultural activity involving the clearing, cutting or disturbing of more than 20,000 square feet in a one year period must file a declaration of intent as provided for in Section 3.3 of this Part which includes:
 - (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration of intent; 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 or land for electric generating stations licensed pursuant to §7-204, §7-205, §7-207 and §7-208 of the Public Utilities Article, provided that :
 - (1) Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §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, Sections 54A and 54B or Section 54-I, Annotated Code of Maryland,
- g. Except for a public utility subject to Section 3.2.f. of this Part, 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 Part; or

- (2) The right-of-way's initial construction was approved under this Ordinance.
- h. An activity conducted on an existing single residential lot of any size existing prior to July 1, 1991, or a linear project not otherwise exempted under this ordinance, if the activity:
 - (1) Does not result in the cumulative cutting, clearing or grading of more than 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 ordinance; and
 - (3) Is the subject of a declaration of intent filed with the Town of Elkton, as provided for in Section 3.3. of this Part, stating that the lot will not be the subject of regulated activity within five (5) years of the cutting, clearing or grading of forest.
- i. Strip or deep mining 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.
- k. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or grandchild of the owner, if the activity:
 - (1) Does not result in the cutting, clearing or grading of more than 20,000 square feet of forest; and
 - (2) Is the subject of a declaration of intent filed with the Department, as provided for in Section 3.3. of this Part, which states that transfer of ownership may result in a loss of exemption.
- l. A preliminary plan of subdivision, a site plan, or a grading or sediment control plan approved before July 1, 1991.
- m. A planned unit development that, by December 31, 1991 has:
 - (1) Met all requirements for planned unit development approval; and
 - (2) Obtained preliminary development plan approval by the Town of Elkton Planning Commission.
- n. Resubdivision, add-on, subtraction, agricultural transfer or 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:
 - (1) The action 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 3.3 of this Section.
 - o. That area that was previously developed and is covered by paved surface at the time of application for subdivision plan, grading or sediment control permit approval.
3. Declaration of Intent.
- a. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, Sections 5-103 and 5-1601--5-1612, Annotated Code of Maryland, and 3.2. of this Section.
 - b. A person seeking an exemption under 3.2.c, d, h, k, and n of this Section shall file a declaration of intent with the Department.
 - c. The declaration of intent is effective for five years.
 - d. The existence of a declaration of intent does not preclude:
 - (1) An exempted activity on the property subject to a declaration of intent, if the activity:
 - (a) Does not conflict with the purpose of any existing declaration of intent; and
 - (b) Complies with the applicable requirements for an exempted activity
 - (2) A regulated activity on the area covered by the declaration of intent, if the activity occurs within 5 years of the effective date of the declaration of intent, in which case:
 - (a) There shall be an immediate loss of exemption, or
 - (b) There may be a noncompliance action taken by the Department, as appropriate, under this Part; or
 - (3) A regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Part are satisfied.
 - e. The Town of Elkton may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
 - (1) Meet the retention, afforestation and reforestation requirements established in Section 3 to 8 of this Part and the Forest Conservation Manual; or
 - (2) Pay a noncompliance fee of \$1.00 per square foot of forest cut or cleared under the declaration of intent;
 - (3) Be subject to other enforcement actions appropriate under Natural Resources Article, Sections 5-1601 to 5-1612, Annotated Code of Maryland and this Part; or;

- (4) File a declaration of intent with the Department, if the activity in question is found to meet the exemption requirement as outlined in Section 3.2. of this Part.
- f. In its determination of appropriate enforcement action, the Department may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this ordinance.
- g. The declaration of intent is effective for 5 years.

Section 4. General Requirements

1. A person making application after the effective date of December 22, 1992, for subdivision, site plan approval, local agency 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. Submit to the 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 Department, as provided in the Forest Conservation Manual, to protect retained forests and trees during construction.
2. 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.

Section 5. Forest Stand Delineation

1. Criteria.
 - a. A forest stand delineation shall be submitted at the initial stages of subdivision, site plan or project plan approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.
 - b. The delineation shall be prepared by a licensed forester, licensed landscape architect or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.
 - c. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:
 - (1) A topographic map delineating intermittent and perennial streams, and steep slopes over 25 percent;
 - (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 percent or more;
 - (3) Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;

- (4) Location of 100-year floodplains;
 - (5) Information required by the Forest Conservation Manual; and
 - (6) Other information the Town of Elkton determines is necessary to implement this Part.
- d. If approved by the Department, a simplified delineation may be submitted for an area:
 - (1) When no forest cover is disturbed during a construction activity; and
 - (2) Designated to be under a long term protective agreement.
- e. The Department shall consider a simplified forest stand delineation complete if it includes:
 - (1) All requirements under Section 5.1.c.(1) and (2) and (4) and (5) of this Part.
 - (2) A map showing existing forest cover as verified by field inspection; and
 - (3) Other information required by this Part.
- f. An approved forest stand delineation may remain in effect for a period not longer than 5 years.
- g. Time for Submittal.
 - (1) Within 45 calendar days after receipt of the forest stand delineation, the Department shall notify the applicant whether the forest stand delineation is complete and correct.
 - (2) If the Department fails to notify the applicant within 45 days, the delineation shall be treated as complete and correct.
 - (3) The Department may require further information or provide for an additional 15 calendar days under extenuating circumstances.

Section 6. Forest Conservation Plan

- 1. General Provisions.
 - 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 Department:
 - (1) How techniques for forest retention have been exhausted;

- (2) Why the priority forests and priority areas specified in Natural Resources Article, Section 5-1607 (c), Annotated Code of Maryland, and Section 7.2. of this Part, cannot be left in an undisturbed condition;
 - (3) 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 Section 5-1607, Annotated Code of Maryland and Sections 7 and 9 of this Part; and
 - (4) 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.
 - c. The applicant shall demonstrate to the satisfaction of the Department that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the Town of Elkton 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 Natural Resources Article, Section 8-1201--1211, Annotated Code of Maryland, and COMAR 08.05.04 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 article.
 - (2) For the purpose of calculating reforestation mitigation under this ordinance, a forested nontidal 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) Nontidal wetlands shall be considered to be priority areas for 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.
2. Concept/Preliminary Forest Conservation Plan.
- a. A concept/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. A concept/preliminary forest conservation plan shall:

- (1) Be submitted with, and be of the same scale as, the concept/preliminary plan of subdivision, site plan or proposed project plan;
 - (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) Area of forest conservation required, and
 - (c) Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;
 - (4) Include a clear graphic indication of the forest conservation area provided on the site drawn to scale, showing areas where retention of existing forest or afforestation or reforestation is proposed. No forest conservation area, afforestation area or reforestation area shall be proposed for and/or permitted on individual lots within a residential subdivision.
 - (5) Include an explanation of how the provisions of Section 6.1. of this Part have been met;
 - (6) In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;
 - (7) Include a proposed construction timetable showing the sequence of forest conservation procedures;
 - (8) Show the proposed limits of disturbance;
 - (9) Show the proposed stockpile areas;
 - (10) Incorporate a proposed 2-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment;
 - (11) Information required in the Forest Conservation Manual; and
 - (12) Other information the Department determines is necessary to implement this ordinance.
- c. The review of the preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan, or review of preliminary subdivision plat.
- d. During the different stages of the review process, the preliminary forest conservation plan may be modified, provided the Department approves of the changes.

3. Final Forest Conservation Plan

Before the approval of the final subdivision plan or the issuance of the grading or sediment control permit by the Town of Elkton, the applicant shall have an approved forest conservation plan.

- a. The 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. A final forest conservation plan shall:
 - (1) Be submitted with, and be of the same scale as, the following:
 - (a) A final subdivision plan,
 - (b) A final project plan,
 - (c) An application for a grading permit,
 - (d) An application for a sediment control permit, and
 - (e) A final site plan.
 - (2) Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - (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 2-year maintenance agreement 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, including:
 - (a) Watering, and
 - (b) A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Manual;
 - (5) Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
 - (a) Provides protection for acres 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;

- (6) Include the substantive elements required under Section 6.2.b(2) through (5), (7) through (9), and (11) of this Part, as finalized elements of the forest conservation plan; and
- (7) Other information the Department determines is necessary to implement this ordinance.

c. Time for submittal.

- (1) Within 45 calendar days after receipt of final forest conservation plan, the Department shall notify the applicant whether the forest conservation plan is complete and approved.
- (2) If the Department fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
- (3) The Department 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 Department may extend the deadline under extenuating circumstances.

d. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision, site plan or project plan, grading permit application or sediment and erosion control application associated with the project.

e. The Department 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 forest conservation plan.

f. The Department may issue a stop work order against a person who violates a provision of this ordinance or a regulation, order, approved forest conservation plan or maintenance agreement associated with a project subject to this ordinance.

g. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing with the Planning Commission.

Section 7. Afforestation and Retention

1. Afforestation Requirement. A person making application after the effective date of this ordinance 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 uses categories:
 - (a) Agriculture and resource 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:
 - (a) Institutional development areas,
 - (b) High density residential areas,
 - (c) Mixed use and planned unit development areas, and
 - (d) Commercial and industrial use areas;
 - b. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Section 7.1.a (1) and (2) of this Part:
 - (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 forest level as determined by the amount of forest existing before cutting or clearing began.
 2. Retention. The following trees, shrubs, plants, and specific areas are considered priority protection areas for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that reasonable efforts have been made to protect them and the plan for that regulated activity 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, 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;

3. Retention. The following trees, shrubs, plants, and specific areas are considered priority protection areas for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that the applicant qualifies for a variance in accordance with Section 14 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. Sections 1531--1544 and in 50 CFR Part 17,
 - (2) The Maryland Nongame and Endangered Species Conservation act, Natural Resources Article, Sections 10-2A-01--10-2A-09, Annotated Code of Maryland, and
 - (3) COMAR 08.03.08.
 - 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
 - c. Any tree having a diameter measured at four and one-half (4.5) feet above the ground of:
 - (1) thirty (30) inches or more; 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.
 - d. Areas classified as having Priority Forest Structure by the Forest Structure Analysis methodology as described in the Forest Conservation Manual.

Section 8. Reforestation

1. Forest Conservation Threshold.
 - a. There is a forest conservation threshold established for all land use categories, as provided in Subsection b below. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.
 - b. After every reasonable effort to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision, site plan 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 Subsections b and c of this article and consistent with Section 6 of this Part, and the following forest conservation threshold for the applicable land use category:

<u>Category of Use</u>	<u>Threshold Percentage</u>
(1) Agricultural and resource areas	50 percent;
(2) Institutional development areas	20 percent;
(3) High density residential areas	20 percent;
(4) Mixed use and planned unit development areas	15 percent;
(5) Commercial and industrial use area	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 towards 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 Forest Conservation Manual.
- (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 2 acres planted for each acre removed below the threshold.

Section 9. Priorities and Time Requirements for Afforestation and Reforestation

1. Sequence for Afforestation and Reforestation.

- a. After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Town of Elkton, is as follows:
 - (1) Selective clearing and supplemental planting on site;
 - (2) Onsite afforestation or reforestation, if economically feasible, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;

- (3) Offsite afforestation or reforestation, using transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground in the same watershed, when the applicant has demonstrated that no reasonable onsite alternative exists or where any onsite priority areas for afforestation and reforestation have been planted in accordance with this Ordinance and the applicant has justified to the satisfaction of the Town of Elkton that environmental benefits associated with offsite afforestation or reforestation would exceed those derived from onsite planting;
 - (4) When all other options, both onsite and offsite have been exhausted, landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area;
 - (5) Acquisition as a mitigation technique of an offsite protective easement for existing forested areas not currently protected in perpetuity, in which case the afforestation or reforestation credit granted shall not exceed 50% of the area of the forest cover protected.
 - (6) Offsite afforestation or reforestation may include the use of forest banks approved by the Town of Elkton.
- b. A sequence other than the one described in Subsection a of this Section may be used for a specific project, if necessary and approved by the Department, to achieve the objectives of the town land use plan or town land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.
- c. The following are considered a priority for afforestation and reforestation:
- (1) Establish or enhance forest buffers adjacent to intermittent streams to widths of at least fifty (50) feet and to perennial streams to widths of one hundred (100) feet;
 - (2) Establish or enhance non-forested areas on 100-year floodplain, 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 percent or greater and slopes of 15 percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
 - (6) Establish buffers between areas of differing land use, when appropriate, or adjacent to highway 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. A person required to conduct afforestation or reforestation under this article shall accomplish it within 1 year or two growing seasons, whichever is a greater time period, following development project completion.

Section 10. Payment Instead of Afforestation or Reforestation

- 1. Forest Conservation Fund.
 - a. There is established a forest conservation fund in the local program.
 - b. If a person subject to this ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person shall contribute money, at a rate of \$1.00 per square foot of the area of required planting, into the Town of Elkton Forest Conservation Fund.
 - c. Money contributed instead of afforestation or reforestation under this article shall be paid prior to any permits being issued.
 - d. The town shall make every effort to accomplish the reforestation or afforestation for which the money is deposited within 2 years after receipt of the money.
 - e. Money contributed under this article shall remain in the account for a period not exceeding 2 years or 3 growing seasons. At the end of that time, the applicant may file a request on a form, provided by the Department, for the return of the unspent monies if the applicant demonstrates to the satisfaction of the Department that the returned monies will be spent on documented plantings that:
 - (1) Will occur within the Town or watershed as the applicant's project, and
 - (2) Are not being planted to comply with:
 - (a) Reforestation or afforestation requirements of State or other local Forest Conservation Act programs, or
 - (b) Requirements of any other federal, State, or local statute, ordinance, or regulation
 - f. Money deposited in the Town of Elkton Forest Conservation Fund:
 - (1) May be spent on the costs directly related to reforestation and afforestation, including purchase of trees and materials necessary for reforestation and/or afforestation, site identification, acquisition,

preparation and administration costs and acquisition of forest retention easements, maintenance of existing forests and achieving urban canopy goals;

- (2) Shall deposited in a separate forest conservation fund; and
- (3) May not revert to the general fund except as a reimbursement.

g. Sites for Afforestation and Reforestation using Fund Money.

- (1) Except as provided in Subsection g(2) of this section, the reforestation or afforestation requirement under this article shall occur in the Town of Elkton and watershed in which the project is located.
- (2) If the reforestation or afforestation cannot be reasonably accomplished in the Town of Elkton and watershed in which the project is located, then the reforestation or afforestation shall occur at an approved site within Cecil County or watershed in the state in which the project is located.

Section 11. Recommended Tree Species

Recommended Tree Species List.

- 1. Species used for afforestation or reforestation shall be native to Cecil County, when appropriate, and selected from a list of approved species established by the Department.
- 2. The Department shall adopt a list of tree species to be used for any required afforestation or reforestation.

Section 12. Financial Security for Afforestation and Reforestation

- 1. Financial Surety
 - a. A person required to conduct afforestation or reforestation under this article shall furnish financial security in the form of, an irrevocable letter of credit, or other security approved by the Town of Elkton. 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 Town of Elkton, of afforestation and reforestation; and
 - (3) Be in a form and of a content approved by the Town of Elkton and consistent with COMAR 8.19.5.B.
 - b. After one growing season, the person required to file a financial surety under Section 12.1.a of this Part may request reduction of the amount of the financial security by submitting a written request to the Department with a justification for

reducing the financial security amount, including estimated or actual costs to ensure afforestation or reforestation requirements are met.

- c. The Town of Elkton 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 as determined by the Town of Elkton.
- d. If, after two growing seasons, the planting associated with the afforestation or reforestation meet or exceed the standards of the Forest Conservation Manual, the amount of the financial surety shall be returned or released.

Section 13. Standards for Protecting Trees from Construction Activities

- 1. Protection Devices.
 - a. The Town of Elkton requires persons subject to this ordinance to abide by those standards for the protection of trees from construction activity that are provided in the Department of Natural Resources Forest Conservation Manual.
 - b. 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 Department that protective devices have been established.

Section 14. Variances

- 1. Procedure.
 - a. A person may request a variance from this Part from the Planning Commission, if the person demonstrates that enforcement would result in unwarranted hardship to the person.
 - b. 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. The Planning Commission shall make findings whether the applicant has met the requirements in Subsections 1 of this Section and issue a written statement in a period not to exceed 45 days from the date presented to the Planning Commission by the applicant before the granting of a variance.
 - d. An appeal of the Planning Commission's decision shall be filed within 15 days of the signing of that decision to the Board of Appeals. The appeals process and requirements shall conform to the requirements of the Article VI and as may be amended.
 - e. Notice of a request for a variance shall be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.
 - f. There is established by this ordinance 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, Sections 5-1601--5-1612, Annotated Code of Maryland, or this ordinance.

Section 15. Inspections

- 1. The Department shall make the following field inspections of a site subject to the provisions of these regulations.
 - a. An inspection shall take place following the submittal of the forest stand delineation to verify the information presented in that report.
 - b. An inspection shall take place before a construction activity begins to determine whether forest protection measures have been installed and conservation areas are clearly marked onsite.
 - c. An inspection shall take place following completion of all construction activities to determine the level of compliance with the provisions of the final forest conservation plan.

Section 16. Penalties

- 1. Enforcement.
 - a. Noncompliance Fees.

- (1) A person found to be in noncompliance with this ordinance, regulations adopted under this ordinance, the forest conservation plan, or the associated 2-year maintenance agreement, shall be assessed by the Department the penalty of \$1.00 per square foot of the area found to be in noncompliance with required forest conservation.
 - (2) Money collected under Subsection 1.a of this Section shall be deposited in the Forest Conservation Fund in conformance with Section 10 of this Part, and shall be used by the Town for purposes related to implementing this ordinance.
- b. Violation.
- (1) Violation of this ordinance shall be a municipal infraction.
 - (2) In addition to the provisions under Subsection 1 of this article, a person who violates a provision of this ordinance or a regulation or order adopted or issued under this ordinance, plan or management agreement is liable for a penalty not to exceed one thousand dollars (\$1000) for each conviction, which may be recovered in a civil action brought by the Town of Elkton.
 - (3) The fine is payable by the offender to the municipality within twenty (20) Calendar days of receipt of a citation. Repeat offenders may be assessed a fine not to exceed two hundred dollars (\$200) for each repeat offense, and each day a violation continues shall constitute a separate offense.
 - (4) Any person receiving a citation for an infraction may elect to stand trial for the offense by notifying the Town in writing of this intention at least five (5) days prior to the date set for payment of the fine. Failure to pay the fine or to give notice of intent to stand trial may result in an additional fine or adjudication by the court.
 - (5) Adjudication of a municipal infraction is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.
- c. The Town of Elkton may seek an injunction requiring the person to cease violation of this ordinance and take corrective action to restore or reforest an area.
- d. Notwithstanding any other provisions of this article, the Town of Elkton incorporates by reference the enforcement provision under COMAR 08.19.06.03.

Part IV Environmental Standards for Sensitive Areas

Section 1. Environmental Standards for all Subdivisions and Development Requiring Site Plan Approval

1. Perennial Stream No-Disturbance Buffer.
 - a. A one-hundred (100) foot natural buffer from all perennial streams shall be required for all development. Permanent or temporary stormwater and/or sediment control devices shall not be permitted in this Buffer.
2. Intermittent Stream No-Disturbance Buffer.
 - a. A fifty (50) foot buffer from all intermittent streams shall be required for all development. Permanent or temporary stormwater management and sediment control devices shall not be permitted in this buffer.
3. Sensitive Soil no-disturbance buffer. The one-hundred (100) foot perennial stream buffer shall be expanded to include contiguous 100 year floodplain and nontidal wetlands. In addition, the one-hundred (100) foot perennial stream buffer shall be expanded to include hydric soils, highly erodible soils and soils on slopes greater than fifteen (15) percent that are contiguous with the perennial stream, any 100 year flood plain adjacent to the stream, or any nontidal wetlands adjacent to the stream to a maximum distance of three hundred (300) feet.
4. Non-tidal Wetland buffer. A twenty-five (25) foot setback from all non-tidal wetlands shall be required for all development around the extent of the delineated nontidal wetland except as permitted by the U.S. Army Corp of Engineers and the State of Maryland, Department of Natural Resources, Non-tidal Wetland Division.
5. Steep Slopes.
 - a. No structure or impervious surface shall occur on any slope with a grade of fifteen (15) percent or more covering a contiguous area of 10,000 square feet or more.
 - b. On slopes between fifteen (15) and twenty-five (25) percent no structure or impervious surface shall occur, and good engineering practices shall be used to insure sediment and erosion control and slope stabilization before, during and after disturbance activities and to minimize cut and fill.
 - c. A minimum fifty (50) foot buffer shall be established between development and the crest of slopes in excess of twenty-five (25) percent.
6. Habitats of Rare, Threatened and Endangered Species. Development shall avoid these areas as described by the Maryland DNR, Natural Heritage Program.