

AN ORDINANCE TO AMEND
TITLE 16
OF THE CODE OF EMMITSBURG
ENTITLED
SUBDIVISIONS

BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Board of Commissioners of the Town of Emmitsburg, Maryland, pursuant to the authority granted to them by the laws of Maryland and the Charter of the Town of Emmitsburg, that Chapter 16.48 of the Emmitsburg Municipal Code, be amended as follows:

New language is indicated by being in **BOLD, CAPITAL LETTERS**, and deleted language is designated by being in [~~brackets and strike out~~].

Chapter 16.48 - Forest Conservation

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16.48.230 – BIENNIAL REVIEW

~~[Article 1.— General Provisions]~~

~~[16.48.010— The initial state of subdivision submittal process.]~~

~~[A.— Information Required. At a minimum, the initial consultation with the commission charged with review of subdivision shall include the following items. Additional information may be required.]~~

~~[B.— A forest stand delineation, if required by Section 12-202, Annotated Code of Maryland. If a forest stand delineation is required, it shall be complete and correct before a preliminary plan is submitted.]~~

~~[16.48.020— The preliminary subdivision plan.]~~

~~[A.— Information Required. At a minimum, the preliminary plan shall include the following items. Additional information may be required because of site specific conditions.]~~

~~[1.— Proposed Development. A forest conservation plan, if required by Section 12-202, Annotated Code of Maryland.]~~

~~[B.— Approval Procedure.]~~

~~[1.— If a forest conservation plan is required by Section 12-202, Annotated Code of Maryland, the preliminary plan shall not be approved until the forest conservation plan has been approved by the planning commission.]~~

ARTICLE I - PURPOSE AND GENERAL PROVISIONS.

16.48.010 – PURPOSE.

A. The Town’s Board of Commissioners has determined that to meet the requirements of Natural Resources Article, §§5-1601—5-1612, Annotated Code of Maryland, the provisions of this [~~Ordinance~~] **CHAPTER** must be enacted.

~~[Article 2.— Sediment Control~~

~~16.48.030— Application for permit.~~

~~The plans accompanying the application shall be prepared and certified by a professional engineer or land surveyor, including landscape architects or architect. The standards and specifications shall serve as the standards for erosion and sediment control in Frederick County for activities other than forest harvest operations. The plans shall contain the following:~~

~~A.— If required by Section 12-202, Annotated Code of Maryland, a forest stand delineation and a forest conservation plan.~~

~~16.48.040— Conditions for issuance of permit.~~

~~If a forest conservation plan is required by Section 12-202, Annotated Code of Maryland, the zoning administrator may not issue a permit until a forest conservation plan has been approved by the planning and zoning commission.~~

~~Article 3.— Construction~~

~~16.48.050— Application for grading permit.~~

~~The plans accompanying the application shall be prepared and certified by a professional engineer or land surveyor, including landscape architects or architect. The plans shall contain the following:~~

- ~~A. If required by Section 12-202, Annotated Code of Maryland, a forest stand delineation and a forest conservation plan.~~

~~16.48.060—Conditions for issuance of grading permit.~~

~~If a forest conservation plan is required by Section 12-202, Annotated Code of Maryland, the zoning administrator may not issue a permit until a forest conservation plan has been approved by the planning and zoning commission.~~

~~Article 4.—Forest and Tree Conservation]~~

~~[16.48.070] ARTICLE II - FOREST AND TREE CONSERVATION Definitions.~~

16.48.020 – DEFINITIONS.

In this ~~[section]~~ CHAPTER, the following terms have the meanings indicated:

"Afforestation" means:

- ~~1. [The] Establishment of [the tree cover] A FOREST on an area from which [it] FOREST COVER has [always or very long] been absent FOR A LONG PERIOD OF TIME; or [the]~~
2. Planting of open areas which are not presently in forest cover.

“AGRICULTURAL ACTIVITY” MEANS 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” MEANS THE CONSERVATION/RECREATION (CR) EMMITSBURG ZONING CLASSIFICATION.

"Applicant" means a person who is applying for subdivision, ~~[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" means a document:

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

"Caliper" means the diameter measured two inches above the root collar.

"Champion tree" means the largest tree of its species within the United States, the State, county or municipality.

~~["Champion tree of the state" means a tree which appears in the state forest conservation manual list of state champion trees.]~~

"Commercial and industrial uses" ~~[includes]~~ **MEANS** manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding, and parking areas, and corresponds to Emmitsburg's **NEIGHBORHOOD COMMERCIAL (B-1), GENERAL COMMERCIAL (B-2), INDUSTRIAL PARK (IP), AND OFFICE, RESEARCH, AND INDUSTRIAL (ORI)** ~~[and HS]~~ zoning classification~~S~~.

"Commercial logging or timber harvesting operations" means the cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

"Commission" means Emmitsburg's Planning ~~[and zoning]~~ Commission.

"Critical habitat area" means a critical habitat for ~~AN~~ endangered species and its surrounding protection area. A critical habitat area shall:

1. Be likely to contribute to the long-term survival of the species;
2. Be likely to be occupied by the species for the foreseeable future; and
3. Constitute habitat of the species which is ~~[deemed]~~ **CONSIDERED** critical under **NATURAL RESOURCES ARTICLE**, ~~[Title 4, Subtitle 2A, Section 6, Section]~~ §§4-2A-04 and ~~[Section]~~ 10-2A-06 ~~[of the Natural Resources Article,]~~ Annotated Code of Maryland.

"Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under ~~[Section]~~ **NATURAL RESOURCES ARTICLE**, §§4-2A-04~~[, Section]~~ ~~AND [10-2A-04]~~ **10-2A-04**, ~~[of the Natural Resources Article,]~~ Annotated Code of Maryland.

"Declaration on intent" means:

1. A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property:
 - a. Is for certain activities exempted under this Chapter or Natural Resources Article, ~~[Section]~~ §§5-103 and 5-1601—5-1612, Annotated Code of Maryland~~[,]~~;
 - b. Does not circumvent the requirements of this Chapter or Natural Resources Article, ~~[Section]~~ §§5-103 and 5-1601—5-1612, Annotated Code of Maryland~~[,]~~; **AND**
 - c. Does not conflict with the purpose~~S~~ of any other declaration of intent; or
2. The document required under COMAR 08.19.01.05 or this Chapter.

"Department" means the ~~[town of Emmitsburg planning and zoning commission]~~ **DEPARTMENT CHARGED WITH IMPLEMENTING THE TOWN'S FOREST CONSERVATION PROGRAM.**

[²] Development Project. [²]

1. "Development project" means the grading or construction activities occurring on a specific tract that is ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or greater.
2. "Development project" includes redevelopment.

"Development project completion" means for the purposes of afforestation, reforestation, or payment into a fund:

1. The release of the development bond, if required;
2. Acceptance of the project's streets, utilities, and public services by the Commission; or
3. Designation by the ~~[Commission]~~ **DEPARTMENT** or State that a:
 - a. Development project has been completed, or
 - b. Particular stage of a staged development project, including a planned unit development, has been completed.

FOREST.

1. "Forest" means a biological community dominated by trees and other woody plants covering a land area of ten thousand (10,000) square feet or greater.
- ~~{1-}~~ 2. "Forest" includes:
 - a. Areas that have at least one hundred (100) **LIVE** trees per acre with at least fifty (50) percent of those trees having a two inch or greater diameter at 4.5 feet above the ground and larger; and
 - b. ~~{Forest}~~ Areas that have been cut but not cleared.
- ~~{2-}~~ 3. "Forest" does not include orchards.

"Forest Conservancy District Board" means the forestry board created for each State forestry conservancy district under Natural Resources Article, ~~{See-}~~ §§5-601—~~{6-610}~~ **5-610**, Annotated Code of Maryland.

"Forest conservation" means the retention of existing forest or the creation of new forest at the levels ~~{prescribed by the town planning and zoning commission}~~ **SET BY THE STATE OR DEPARTMENT.**

"Forest Conservation and Management Agreement" means an agreement as stated in the Tax-Property Article, ~~{Section}~~ §8-211, Annotated Code of Maryland.

"Forest conservation plan" means a plan approved pursuant to ~~{Section 16.48.120}~~ **NATURAL RESOURCES ARTICLE, §§5-1606 AND 5-1607, ANNOTATED CODE OF MARYLAND AND TOWN CODE CHAPTER 16.48.**

"Forest Conservation Technical Manual" means the ~~{Maryland}~~ State **OF MARYLAND'S FOREST CONSERVATION** Technical Manual, **THIRD ADDITION, 1997, AS IT MAY BE AMENDED, AND OTHER SPECIFICATIONS AND STANDARDS OF PERFORMANCE AS PROVIDED IN THIS CHAPTER AND IN SUPPORTING DOCUMENTS ISSUED BY THE DEPARTMENT,** ~~{incorporated by reference}~~, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

"Forest cover" means the area of a site meeting the definition of forest.

"Forest management plan" means [a] **THE** plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

"FOREST MITIGATION BANK" MEANS AN AREA OF LAND, WHICH HAS BEEN INTENTIONALLY AFFORESTED OR REFORESTED FOR THE EXPRESS PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS.

"FOREST MITIGATION BANK AGREEMENT" MEANS AN AGREEMENT ENTERED INTO BY AN INDIVIDUAL OWNING A FOREST MITIGATION BANK AND THE DEPARTMENT OR LOCAL GOVERNMENT WHICH COMMITS THE BANKER TO CERTAIN PROCEDURES AND REQUIREMENTS WHEN CREATING AND OPERATING THE FOREST MITIGATION BANK"

"FOREST MITIGATION BANK PLAN" MEANS A PLAN SUBMITTED FOR APPROVAL OF A FOREST MITIGATION BANK TO THE DEPARTMENT, OR A LOCAL GOVERNMENT WITH AN APPROVED LOCAL PROGRAM, BY AN INDIVIDUAL PROPOSING TO ESTABLISH A FOREST MITIGATION BANK.

"Forest stand delineations" means the methodology for evaluating the existing vegetation on a site proposed for development, as ~~[set forth]~~ **PROVIDED** in the Forest Conservation **TECHNICAL** Manual.

~~["Forest slopes" means an area meeting the definition of forest and growing on an area with a slope of twenty five (25) percent or more and covering an area of at least ten thousand (10,000) square feet.]~~

"Growing season" means a period of consecutive frost-free days as stated in the **CURRENT** soil survey for Frederick County~~[-]~~ published by the National ~~[Co-op]~~ **COOPERATIVE** Soil Survey Program, 16 U.S.C. ~~[Section]~~ §590 (a)—(f).

"High density residential areas" means areas **LOCATED WITHIN** ~~[zoned for densities greater than one dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, and corresponds to]~~ the **HIGH DENSITY RESIDENTIAL (R-3)** Emmitsburg zoning classification~~[s: RS, (R-3)]~~.

"Institutional development area" **MEANS AREAS LOCATED WITHIN** ~~[includes civic, institutional, and cultural uses, such as libraries, meeting halls, fire and rescue stations, post offices, government buildings, government offices and facilities, memorials, amphitheaters, museums, places of worship, schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, and cemeteries and corresponds to the Town]~~ **THE INSTITUTIONAL (INST) EMMITSBURG** zoning classification ~~[-INST]~~.

"Intermittent stream" means a stream in which surface water is absent during a ~~[portion]~~ **PART** 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 ~~[vegetation]~~ **VERIFICATION**.

"Landscaping plan" means a plan:

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

"LINEAR PROJECT" MEANS A PROJECT WHICH:

- 1. IS ELONGATED WITH NEARLY PARALLEL SIDES;**
- 2. 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**
- 3. MAY TRAVERSE FEE SIMPLE PROPERTIES THROUGH DEFINED BOUNDARIES, OR ESTABLISHED EASEMENT RIGHTS.**

"Local agency" means each unit in the executive, legislative, or judicial branch of a county or municipal government, including an office or department of public works.

"Lot" means a unit of land, the boundaries of which have been established ~~[as a result of a deed or previous]~~ **BY** 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 Chapter without an approved forest stand delineation and forest conservation plan.

“LOW DENSITY RESIDENTIAL AREAS” MEANS AREAS LOCATED WITHIN THE LOW DENSITY RESIDENTIAL (R-1) EMMITSBURG ZONING CLASSIFICATION.

"Maintenance agreement" means the short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, [~~Section 6-1605~~], **§5-1605**, Annotated Code of Maryland, and this [~~ordinance~~] **CHAPTER.**

“MEDIUM DENSITY RESIDENTIAL AREAS” MEANS AREAS LOCATED WITHIN THE MEDIUM DENSITY RESIDENTIAL (R-2) EMMITSBURG ZONING CLASSIFICATION.

"Minor development project" means a project:

1. On less than five acres of land containing not more than four lots per acre; or
2. Substantively similar as defined by the Department and approved by the State.

"Mixed use development" means a single, relatively high-density development project, usually commercial in nature, which includes two or more types of uses, and corresponds to **AREAS WITHIN** the Emmitsburg **VILLAGE ZONE (VZ)** zoning classification [~~(s) of VZ~~].

“NATURAL REGENERATION” MEANS 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" means:

1. **EXCEPT IN AGRICULTURE AND RESOURCE AREAS**, the total area of a site, including both forested and non-forested areas, [~~at~~] **TO** the nearest one-tenth acre, reduced by the area [~~found to be within the boundaries of the one hundred year floodplain.~~] where forest clearing is restricted by another local ordinance or program;
2. **IN AGRICULTURE AND RESOURCE AREAS, THE PART OF THE TOTAL TRACT FOR WHICH LAND USE WILL BE CHANGED OR WILL NO LONGER BE USED FOR PRIMARILY AGRICULTURAL ACTIVITIES, REDUCED BY THAT AREA WHERE FOREST CLEARING IS RESTRICTED BY ANOTHER LOCAL ORDINANCE OR PROGRAM; AND**
3. **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 IMPROVEMENT’S PROGRAM PROJECT DESCRIPTION.**

NON-TIDAL WETLANDS.

1. "Non-tidal wetlandS" means an area that is:

- a. 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[.]; **AND**
- [1.] b. [~~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.

2. "Nontidal wetlands" does not include tidal wetlands regulated under Title 9 of the Natural Resources Article, Annotated Code of Maryland.

"Offsite" means outside **OF** the limits of the area encompassed by the [~~development plan, including any area(s) classified as one hundred-year plain~~] **TRACT**.

"Onsite" means within the limits of the area encompassed by the [~~development plan~~] **TRACT**, including [~~any~~] **AN** area[~~(s)~~] classified as **A** one hundred **(100)** year **FLOOD** plain.

"One-hundred **(100)** year flood" means a flood, which has a one percent chance of being equalled or exceeded in any given year. Except for Class-III waters (natural trout streams), a body of water with a watershed less than four hundred (400) acres is excluded.

"One-hundred-year **(100)** floodplain" means an area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a one hundred **(100)** year frequency storm event, **OR A 100-YEAR FLOOD**.

[~~A one hundred year flood is a flood which has a one percent chance of being equalled or exceeded in any given year. 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" means 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" [~~includes~~] **MEANS** the federal government, the State, [~~any~~] **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" means a development comprised of a combination of land uses or varying intensities of the same land use in accordance with an integrated plan that provides flexibility in land use design approved by Emmitsburg with at least twenty (20) percent of the land permanently dedicated to open space and correspond to Emmitsburg's **INSTITUTIONAL (INST)** zoning classification[~~OS~~].

"Priority funding area" means an area designated as a priority funding area under **STATE FINANCE AND PROCUREMENT ARTICLE**, [Section] §5-7b-02, [~~of the state finance and procurement article~~] **ANNOTATED CODE OF MARYLAND**.

"Project plan" means a construction, grading, or sediment control activity on an area of [~~twenty thousand (20,000)~~] **FORTY THOUSAND (40,000)** square feet or greater by a local agency.

"Public utility" means any:

1. Transmission line or electric generating station; **OR**
2. Water, sewer, electric, gas, telephone, or television cable service line.

REFORESTATION

1. "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 two-inch or greater diameter measured at 4.5 feet above the ground, within seven years; **OR**
 - b. **ESTABLISHMENT OF A FOREST ACCORDING TO PROCEDURES SET FORTH IN THE FOREST CONSERVATION TECHNICAL MANUAL.**

2. "Reforestation" **OR** "**REFORESTED**" includes landscaping ~~[or]~~ **OF** areas under an approved landscaping plan ~~[that]~~ establish~~[ed]~~**ING** a forest ~~[that is]~~ at least thirty-five (35) feet wide and covering two thousand five hundred (2,500) square feet **OR MORE** of area.

3. "**REFORESTATION**" **OR** "**REFORESTED**" **FOR A LINEAR PROJECT INVOLVING OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR DIAMETER CRITERIA.**

"Regulated activity" means any of the following activities, when that activity occurs on a unit of land which is ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or greater:

1. Subdivision;
2. Grading;
3. An activity that requires a sediment control permit; or
4. Project plan of a local agency.

"Retention" means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as ~~[set forth]~~ **PROVIDED** in the Forest Conservation **TECHNICAL** Manual.

"SEDIMENT CONTROL PERMIT" MEANS THE AUTHORIZATION OF AN ACTIVITY REGULATED UNDER A SEDIMENT CONTROL PLAN AS PROVIDED IN ENVIRONMENT ARTICLE, TITLE 4, ANNOTATED CODE OF MARYLAND.

"SEEDLING" MEANS AN UNBRANCHED WOODY PLANT, LESS THAN 24 INCHES IN HEIGHT AND HAVING A DIAMETER OF LESS THAN ½ INCH MEASURED AT TWO INCHES ABOVE THE ROOT COLLAR.

"Selective clearing" means the careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

"Stream buffer" means all lands lying within fifty (50) feet, measured from the top of each normal bank of ~~[any]~~ **A** perennial or intermittent stream.

"Stream restoration project" means an activity that:

- ~~[A.]~~ **1.** Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway or floodplain;
- ~~[B.]~~ **2.** Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to ~~[these]~~ **THE NUMBER** removed by the project;
- ~~[C.]~~ **3.** Maybe performed under a municipal separate storm sewer system permit, a watershed implementation plan growth offset, or another plan administered by the State or local government to achieve or maintain water quality standards; and

- ~~[D.]~~ 4. Is not performed to satisfy storm water management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

"Subdivision" means any division of a ~~[parcel]~~ **UNIT** of land into two or more lots or parcels for the purpose, whether immediate or future, ~~[or]~~ **OF** transfer of ownership, sale, lease, or development.

TIMBER HARVESTING.

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

"TOWN" MEANS THE TOWN OF EMMITSBURG, MARYLAND.

~~[Tract. 1. — Except as provided in subsection (2) of this definition,]~~ "Tract" means property **OR UNIT OF LAND** subject to an application for a grading or sediment control permit, ~~[or]~~ subdivision approval, **PROJECT PLAN APPROVAL, OR AREAS SUBJECT TO THIS LAW.**

- ~~[2. — If property is included in a planned unit development, "tract" means the entire property subject to the planned unit development.]~~

"Tract for a planned unit development" means the entire property subject to a planned unit development.

"Tree" means a large, **BRANCHED** woody plant having one or several self-supporting stems or trunks ~~[and numerous branches]~~ that reach a height of at least twenty (20) feet at maturity.

VARIANCE.

1. "Variance" ~~[as provided for in Section 16.48.200,]~~ means relief from Natural Resources Article, ~~[Section]~~ §§5-1601—5-1612, Annotated Code of Maryland, **OR THIS CHAPTER.**
2. "Variance" does not mean a zoning variance.

"Watershed" means all land[s] lying within an area described as a subbasin **IN WATER QUALITY REGULATIONS ADOPTED** by the Department of the Environment under COMAR 26.08.02.08.

"Whip" means an unbranched woody plant greater than ~~[forty-eight (48)]~~ **TWENTY FOUR (24)** inches in height and having a diameter less than one inch caliper measured at two inches above the root collar.

~~[16.48.080—Applicability]~~ **ARTICLE III - APPLICATION.**

16.48.030 – APPLICABILITY.

A. Except as provided in subsection B, this ~~[article]~~ **CHAPTER** applies to:

1. A person making application for a subdivision, project plan, grading, or sediment control approval on units of land ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or greater after the effective date of this ~~[article]~~ **CHAPTER;**
2. A public utility not exempt under subsection B (5) and (6) of this section;
3. A unit of ~~[county]~~ **COUNTY** or municipal government, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or greater.

B. This ~~[article]~~ **CHAPTER** does not apply to:

1. ~~[Any]~~ **HIGHWAY** construction ~~[activity]~~ **ACTIVITIES** ~~[that is subject to]~~ **UNDER** Natural Resources Article, ~~[Section]~~ §5-103, Annotated Code of Maryland;
2. ~~[Any cutting or clearing of forest, or any other development activity, in areas governed by the Chesapeake Bay Critical Area Protection Law (Title 8, Subtitle 18 of the Natural Resources Article, Annotated Code of Maryland);]~~ **AREAS GOVERNED BY THE CHESAPEAKE BAY CRITICAL AREA PROTECTION LAW, NATURAL RESOURCES ARTICLE, §§8-1801—8-1817, ANNOTATED CODE OF MARYLAND, INCLUDING THOSE AREAS INTO WHICH CRITICAL AREA FOREST PROTECTION MEASURES HAVE BEEN EXTENDED UNDER NATURAL RESOURCES ARTICLE, §5-1602(C), ANNOTATED CODE OF MARYLAND;**
3. Commercial logging and timber-harvesting operations, including ~~[any]~~ harvesting conducted ~~[under]~~ **SUBJECT TO** the forest conservation and management program under ~~[Section]~~ §8-211 of the Tax-Property Article, Annotated Code of Maryland, that ~~[were]~~ **ARE** completed:
 - a. ~~[Is completed]~~ Before July 1, 1991; or
 - b. ~~[Is completed on or]~~ After July 1, 1991, ~~[and the]~~ **ON** property ~~[on]~~ which:
 1. ~~[the cutting or clearing is conducted is]~~ **HAS** not **BEEEN** the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation; **AND**
 2. Is **THE** subject ~~[to]~~ **OF** a declaration ~~[on]~~ **OF** intent ~~[signed by owner and or developer and approved by the local soil conservation district or sediment control agency]~~ **AS PROVIDED FOR IN §16.48.040 OF THIS CHAPTER, APPROVED BY THE COMMISSION;**
4. 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 ~~[; However]~~, **EXCEPT THAT** a person engaging in an agricultural activity clearing ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or ~~[more]~~ **GREATER** of forest within a one-year period, ~~[who wishes to]~~ **MAY NOT** receive an agricultural exemption, **UNLESS THE PERSON** ~~[shall]~~ fileS a declaration of intent ~~[with the Department shall]~~ **AS PROVIDED FOR IN §16.48.040 OF THIS ARTICLE WHICH** includeS:
 - a. A statement that the landowner or ~~[his]~~ **LANDOWNER’S** agent will practice agriculture on that ~~[tract]~~ **PORTION OF THE PROPERTY** for five years from the date of declaration; and
 - b. A sketch map of the ~~[tract]~~ **PROPERTY** which shows the area to be cleared;
5. The cutting or clearing of public utility rights-of-way licensed ~~[pursuant to Sections 54A and 54B or Section 54I of Article 78 of the Code, unless the activity is subject to the requirements of a previous forest conservation plan prepared under this chapter, provided that:]~~ **UNDER PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND, OR LAND FOR ELECTRIC GENERATING STATIONS LICENSED UNDER PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND, IF:**
 - a. ~~[Any]~~ Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, ~~[Section 5-1604(F)]~~ **§5-1603(F)**, Annotated Code of Maryland; and
 - b. ~~[The]~~ Cutting or clearing of the forest is conducted ~~[so as]~~ to minimize the loss of forest;
6. ~~[Any]~~ Routine maintenance **OR EMERGENCY REPAIRS** of public utility rights-of-way **LICENSED UNDER PUBLIC UTILITY COMPANIES, §§7-207 AND 7-208 OR 7-205, ANNOTATED CODE OF MARYLAND;**

7. **EXCEPT FOR A PUBLIC UTILITY SUBJECT TO §16.48.030.B.6. OF THIS ARTICLE, ROUTINE MAINTENANCE OR EMERGENCY REPAIRS OF A PUBLIC UTILITY RIGHT-OF-WAY IF:**
- a. **THE RIGHT-OF-WAY EXISTED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER; OR**
 - b. **THE RIGHT-OF-WAY'S INITIAL CONSTRUCTION WAS APPROVED UNDER THIS CHAPTER;**
- ~~[7. Any]~~ 8. **A RESIDENTIAL CONSTRUCTION activity conducted on [a] AN EXISTING single lot of any size ~~[provided that]~~ OF RECORD AT THE TIME OF APPLICATION, OR A LINEAR PROJECT NOT OTHERWISE EXEMPTED UNDER THIS ARTICLE, IF THE ACTIVITY:**
- a. ~~[The activity]~~ Does not result in the **CUMULATIVE** cutting, clearing, or grading of more than ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet of forest; ~~[and]~~
 - b. ~~[The activity on the lot will]~~ **DOES** not result in the cutting, clearing, or grading of ~~[any]~~ A forest that is subject to the requirements of a previous forest conservation plan ~~[prepared under this subtitle]~~ **APPROVED UNDER THIS CHAPTER; AND**
 - c. Is the subject of a declaration of intent filed with the Commission as provided for in ~~[Section 16.48.090]~~ **§16.48.040 OF THIS CHAPTER**, stating that the lot will not be the subject of a regulated activity within five years of the cutting, clearing, or grading of forest.
- ~~[8. Any]~~ 9. Strip or deep mining of coal regulated under ~~[Title 7, Subtitle 5 or 5A of the Natural Resources Article,]~~ **ENVIRONMENT ARTICLE, TITLE 15, SUBTITLE 5 OR 6,** Annotated Code of Maryland;
- ~~[9. Any]~~ 10. Non-coal surface mining regulated under **ENVIRONMENT ARTICLE, TITLE 15, SUBTITLE 8,** ~~[Title 7, Subtitle 6A of the Natural Resources Article,]~~ Annotated Code of Maryland;
- ~~[10.]~~ 11. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child of the owner, if the activity:
- a. Does not result in the cutting, clearing, or grading of more than ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet of forest; and
 - b. Is the subject of a declaration on intent filed with the Department, **AS PROVIDED FOR IN §16.48.040 OF THIS ARTICLE**, which states that transfer of ownership may result in a loss of exemption;
- ~~[11.]~~ 12. A preliminary plan of subdivision or a grading or sediment control plan approved before July 1, 1991;
13. **A REAL ESTATE TRANSFER TO PROVIDE A SECURITY, LEASEHOLD, OR OTHER LEGAL OR EQUITABLE INTEREST, INCLUDING A TRANSFER OF TITLE, OF A PORTION OF A LOT OR PARCEL IF:**
- a. **THE TRANSFER DOES NOT INVOLVE A CHANGE IN LAND USE, OR NEW DEVELOPMENT OR REDEVELOPMENT, WITH ASSOCIATED LAND-DISTURBING ACTIVITIES; AND**
 - b. **BOTH THE GRANTOR AND GRANTEE FILE A DECLARATION OF INTENT, AS PROVIDED FOR IN §16.48.040 OF THIS CHAPTER;**
- ~~[12.]~~ 14. An activity on a previously developed area covered by impervious surface and located in the priority funding area;
- ~~[13.]~~ 15. Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, ~~[so long as]~~ **IF** the maintenance or retrofitting is within the original limits of disturbance for construction of the existing structure, or within any maintenance easement for access to the structure; **OR**

~~[H4.]~~ 16. A stream restoration project, as defined in **ARTICLE II OF THIS CHAPTER** [~~this ordinance~~], for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least five years with the affected property owner or owners.

~~[16.48.090]~~ **16.48.040** - 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 this Chapter.

B. A person seeking an exemption under [~~Section 16.48.080~~] **§16.48.030.B. 3, 4, 8, 11, AND 13 OF THIS CHAPTER** shall file a declaration of intent with the Commission.

C. The declaration of intent is effective for five years.

D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:

1. Does not conflict with the purpose of any existing declaration [~~of~~] **OF** intent; and
2. Complies with the applicable requirements for an exempted activity.

E. If a regulated activity on the area covered by the declaration [~~of~~] **OF** intent occurs within five years of the effective date of the declaration of intent:

1. There shall be an immediate loss of exemption; or
2. There may be a noncompliance action taken by the Department, as appropriate, under this Chapter.

F. An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Chapter are satisfied.

G. The Department 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 **ARTICLES III—XIII OF** this Chapter;
2. Pay a noncompliance fee of thirty (30) cents 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, [~~Section~~] §§5-1601—5-1612, Annotated Code of Maryland, and this Chapter; or
4. File a declaration of intent with the Department.

H. 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 Chapter.

I. COMMERCIAL LOGGING AND TIMBER HARVESTING. THE REQUIREMENTS FOR A DECLARATION OF INTENT MAY BE SATISFIED BY A FOREST MANAGEMENT PLAN FOR THE ENTIRE TRACT, PREPARED BY A FORESTER LICENSED IN MARYLAND ACCORDING TO BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE, TITLE 7, ANNOTATED CODE OF MARYLAND, WHICH OUTLINES MANAGEMENT PRACTICES NEEDED TO MEET THE STATED OBJECTIVES FOR A MINIMUM OF 5 YEARS.

J. AGRICULTURAL ACTIVITIES OR COMMERCIAL LOGGING AND TIMBER HARVESTING. A DECLARATION OF INTENT MAY BE PART OF AN AMENDED SEDIMENT AND EROSION CONTROL PLAN WHICH ENSURES THAT THE ACTIVITY MEETS THE CONDITIONS FOR AN EXEMPTION AS STATED IN ARTICLE III, §16.48.030.B. 3 AND 4.

~~[16.48.100]~~ **ARTICLE IV** - General Requirements.

16.48.050 – GENERAL REQUIREMENTS.

- A. A person ~~[who applies]~~ **MAKING APPLICATION** after **THE EFFECTIVE DATE OF** January 1, 1993, for subdivision **OR LOCAL AGENCY PROJECT PLAN** approval, **A GRADING PERMIT, OR A SEDIMENT CONTROL PERMIT** for an area of land of ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or ~~[more]~~ **GREATER SHALL:**
1. ~~[Shall]~~ Submit to the Commission ~~[a.]~~ a forest stand delineation ~~[for the lot or parcel on which the development is located;]~~ and ~~[b.]~~ a forest conservation plan for the lot or parcel on which the development is located; **AND**
 - ~~[2. Shall not perform any construction activity within the dripline of a tree that is to be retained; and]~~
 - ~~[3. Shall]~~ **2.** Use methods approved by the Commission, as ~~[set forth]~~ **PROVIDED** in the Forest Conservation **TECHNICAL** Manual, to protect retained **FORESTS AND** trees during construction.
- B. 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.**
- C. APPROVAL OF FOREST STAND DELINEATION AND PRELIMINARY AND FINAL FOREST CONSERVATION PLANS SHALL REST WITH THE COMMISSION.**

~~[16.48.110]~~ **ARTICLE V - Forest Stand Delineation.**

16.48.060 – CRITERIA.

- A. A forest stand delineation shall be submitted at the initial stageS of subdivision **APPLICATION OR PROJECT PLAN APPROVAL, BEFORE A GRADING PERMIT APPLICATION, OR BEFORE A SEDIMENT CONTROL APPLICATION IS SUBMITTED** for the **TRACT BEING** ~~[lot or parcel intended to be]~~ 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 will be prepared by a licensed forester or licensed landscape architect who is approved by the commission to:~~
- ~~1. Develop a forest stand delineation according to criteria stated in the forest conservation manual;~~
 - ~~2. Prepare and interpret maps, including soils, topography, floodplain, wetlands and a site map;~~
 - ~~3. Prepare afforestation and reforestation plans as stated in Section 16.48.120 and 16.48.130;~~
 - ~~4. Prepare graphic indication of forest protection and retention areas and all method inclusive [therein;~~
 - ~~5. Review impact of development on forested area;~~
 - ~~6. Prepare forest inventory using forest measurement equipment.]~~
- ~~[D.]~~ **C.** The delineation shall ~~[include]~~ **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 twenty-five (25) percent;
 2. A soil's map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of fifteen (15) percent or more;
 3. Forest stand maps indicating species, location, and size of trees and showing dominant and codominant forest types;
 4. Location of one hundred **(100)** year floodplains;
 5. Information required by the Forest Conservation Technical Manual; and
 6. ~~[Any]~~ Other information ~~[required by]~~ the Department **DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.**

D. IF APPROVED BY THE COMMISSION, A SIMPLIFIED DELINEATION, A CONCEPT PLAN OR PLAT, PRELIMINARY PLAT OR PLAN, SEDIMENT CONTROL PLAN, OR OTHER APPROPRIATE DOCUMENT, VERIFIED BY A SITE VISIT, IF APPROPRIATE, MAY SUBSTITUTE FOR THE FOREST STAND DELINEATION IF:

- 1. NO FOREST COVER IS DISTURBED DURING A CONSTRUCTION ACTIVITY; AND**
- 2. DESIGNATED TO BE UNDER A LONG TERM PROTECTIVE AGREEMENT.**

E. THE COMMISSION SHALL CONSIDER SIMPLIFIED FOREST STAND DELINEATION, OR OTHER SUBSTITUTE PLAN DESCRIBED IN §16.48.050.D., COMPLETE IF IT INCLUDES:

- 1. ALL REQUIREMENTS UNDER §16.48.050.C. 1, 2, 4, AND 5 OF THIS CHAPTER;**
- 2. A MAP SHOWING EXISTING FOREST COVER AS VERIFIED BY FIELD INSPECTION; AND**
- 3. OTHER INFORMATION REQUIRED BY THIS CHAPTER.**

~~[E-]~~ **F.** An approved forest stand delineation may remain in effect for a period not longer than five (5) years.

~~[E-]~~ **G. TIME FOR SUBMITTAL.**

1. Within ~~[sixty (60)]~~ **THIRTY (30)** calendar days after receipt of the forest stand delineation, the ~~[commission or agent]~~ **DEPARTMENT** shall notify the applicant whether the forest stand delineation is complete and correct.
2. If the ~~[commission or agent]~~ **DEPARTMENT** fails to notify the applicant within ~~[sixty (60)]~~ **THIRTY (30)** days, the delineation shall be treated as complete and correct.
3. The ~~[commission]~~ **DEPARTMENT** may require further information or provide for an additional fifteen (15) calendar days under extenuating circumstances.
4. The applicant ~~[will]~~ **SHALL** pay for the review of the ~~[submittal according to Review Fees Policy]~~ **FOREST STAND DELINEATION. FEES ARE TO BE ESTABLISHED FROM TIME TO TIME BY POLICY, RESOLUTION, OR ORDINANCE BY THE TOWN AND SHALL BE PAID AT TIME OF APPLICATION.**

~~[16.48.120]~~ **ARTICLE VI - Forest Conservation Plan.**

16.48.070 – 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 COMMISSION:

- 1. HOW TECHNIQUES FOR FOREST RETENTION HAVE BEEN EXHAUSTED;**
- 2. WHY THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN NATURAL RESOURCES ARTICLE, §5-1604(C)(1), ANNOTATED CODE OF MARYLAND, CANNOT BE LEFT IN AN UNDISTURBED CONDITION:**
 - a. IF PRIORITY FORESTS AND PRIORITY AREAS CANNOT BE LEFT UNDISTURBED, HOW THE SEQUENCE FOR AFFORESTATION OR REFORESTATION WILL BE FOLLOWED IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND;**
 - b. WHERE ON THE SITE IN PRIORITY AREAS AFFORESTATION OR REFORESTATION WILL OCCUR IN COMPLIANCE WITH NATURAL RESOURCES ARTICLE, §5-1607, ANNOTATED CODE OF MARYLAND; AND**

3. HOW THE DISTURBANCE TO THE PRIORITY FORESTS AND PRIORITY AREAS SPECIFIED IN NATURAL RESOURCES ARTICLE, §5-1607(C)(2), ANNOTATED CODE OF MARYLAND, QUALIFIES FOR A VARIANCE.

C. THE APPLICANT SHALL DEMONSTRATE TO THE SATISFACTION OF THE COMMISSION THAT THE REQUIREMENTS FOR AFFORESTATION OR REFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY ACCOMPLISHED IF THE APPLICANT PROPOSES TO MAKE A PAYMENT INTO THE LOCAL FOREST CONSERVATION FUND OR TO PURCHASE CREDITS FROM A FOREST MITIGATION BANK.

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, 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 CHAPTER, A FORESTED NONTIDAL WETLAND PERMITTED TO BE CUT OR CLEARED AND REQUIRED TO BE MITIGATED UNDER ENVIRONMENT ARTICLE, TITLE 9, ANNOTATED CODE OF MARYLAND, 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.**

16.48.080 – PRELIMINARY FOREST CONSERVATION PLAN.

A. A PRELIMINARY forest conservation plan shall be prepared by a licensed forester, A licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01.A.

~~**B. The forest conservation plan will be prepared by a licensed forester, licensed landscape architect, or a qualified professional who is approved by the commission to:**~~

- ~~**1. Develop a forest stand delineation according to criteria stated in the technical manual;**~~
- ~~**2. Prepare and interpret maps, including soils, topography, floodplain, wetlands and a site map;**~~
- ~~**3. Prepare afforestation and reforestation plans as stated in Sections 16.48.120 and 16.48.130;**~~
- ~~**4. Prepare graphic indication of forest protection and retention areas and all method inclusive therein;**~~
- ~~**5. Review impact of development on forested area;**~~
- ~~**6. Prepare forest inventory using forest measurement equipment.**~~

~~**C. Developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.**~~

~~**D. 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(2)), Annotated Code of Maryland, cannot be left in an undisturbed condition; and how the priority forests and priority areas specified in this section qualify for a modification;~~
3. ~~If the 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 (C(1)), Annotated Code of Maryland;~~
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.~~
5. ~~The applicant shall demonstrate to the satisfaction of the department that the requirements for afforestation or reforestation on-site or off-site cannot be reasonably accomplished if the applicant proposes to make a payment into a fund as per Section 16.48.160 instead of afforestation or reforestation.]~~

B. A PRELIMINARY FOREST CONSERVATION PLAN SHALL:

1. **BE SUBMITTED WITH THE PRELIMINARY PLAN OF SUBDIVISION 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 THAT THE APPLICANT PROPOSES TO PROVIDE, INCLUDING BOTH ONSITE AND OFFSITE AREAS;**
4. **INCLUDE A CLEAR GRAPHIC INDICATION OF THE FOREST CONSERVATION PROVIDED ON THE SITE DRAWN TO SCALE, SHOWING AREAS WHERE RETENTION OF EXISTING FOREST OR AFFORESTATION OR REFORESTATION IS PROPOSED;**
5. **INCLUDE AN EXPLANATION OF HOW THE PROVISIONS OF §16.48.070 OF THIS ARTICLE 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 PROPOSED STOCKPILE 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; AND**
11. **OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.**

C. THE REVIEW OF THE PRELIMINARY FOREST CONSERVATION PLAN SHALL BE CONCURRENT WITH THE REVIEW OF THE PRELIMINARY SITE PLAN.

D. DURING THE DIFFERENT STAGES OF THE REVIEW PROCESS, THE PRELIMINARY FOREST CONSERVATION PLAN MAY BE MODIFIED PROVIDED THE COMMISSION APPROVES OF THE CHANGES.

E. THE APPLICANT SHALL PAY FOR THE REVIEW OF THE PRELIMINARY FOREST CONSERVATION PLAN. FEES ARE TO BE ESTABLISHED FROM TIME TO TIME BY

POLICY, RESOLUTION, OR ORDINANCE BY THE TOWN AND SHALL BE PAID AT TIME OF APPLICATION.

16.48.090 – FINAL FOREST CONSERVATION PLAN.

A. A FINAL FOREST CONSERVATION PLAN SHALL BE PREPARED BY A LICENSED FORESTER, A LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01.A.

~~[E.]~~ **B. A FINAL forest conservation plan shall:**

1. Be submitted with the **FOLLOWING**: [~~preliminary subdivision plan or site plan submitted for the site;~~]
 - a. **A FINAL SUBDIVISION PLAN;**
 - b. **A FINAL PROJECT PLAN;**
 - c. **AN APPLICATION FOR A GRADING PERMIT; OR**
 - d. **AN APPLICATION FOR A SEDIMENT CONTROL PERMIT;**
- ~~[2.]~~ Include a map of the site drawing at the same scale as the subdivision plat or site plan;
- ~~[3.]~~ Include a table that lists, in square feet:
 - a. ~~The net tract area;~~
 - b. ~~The total area of forest conservation required; and~~
 - c. ~~The total 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, showing areas where retention of existing forest or afforestation is planned;
- ~~[5.]~~ Include a construction timetable showing the sequence for tree conservation procedures;
- ~~[6.]~~ Include an afforestation or reforestation plan prepared by a licensed forester or licensed landscape architect with a timetable and description of needed site and soil preparation, species, size and spacing to be utilized;]
- ~~[7.]~~ **2. Show PROPOSED locations and types of protective devices to be used during construction activities to protect trees and [areas of] forest designated for conservation;**
- ~~[8.]~~ Show the planned limits of disturbance;
- ~~[9.]~~ Show planned stockpile areas;
- ~~[10.]~~ Incorporate a commitment to complete all required afforestation and reforestation within one year following approval and recording in the county records of the final development plat, or within two growing seasons following approval and recording in the county records of the final development plat, if a particular species in the plan necessitates it;]
- 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;**
- ~~[11.]~~ **4. Incorporate a binding two (2) year [management] 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 [or] AND satisfactory establishment, including:**
 - a. Watering; and
 - b. A reinforcement planting provision if survival rates fall below required standards, as [set forth] **PROVIDED** in the Forest Conservation **TECHNICAL** Manual;
- ~~[12.]~~ **5. Incorporate a LONG-TERM binding protective agreement SPECIFIED IN COMAR 08.19.05.02 that:**

- a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; **AND**
- b. Limits uses in areas of forest conservation to those uses that are **DESIGNATED AND** consistent with forest conservation, including recreational activities and ~~[any]~~ forest management practices that ~~[is]~~ **ARE** used to preserve forest; ~~[and~~
- e. ~~Incorporates conservation easements, deed restrictions, covenants, and other agreements as necessary;~~

~~13. Information required in the forest conservation technical manual; and~~

~~14. Any other information the department requires.]~~

6. INCLUDE THE SUBSTANTIVE ELEMENTS REQUIRED UNDER §16.48.080.B. (2)—(5), (7)—(9), AND (11) OF THIS CHAPTER, AS FINALIZED ELEMENTS OF THE FOREST CONSERVATION PLAN; AND

7. OTHER INFORMATION THE DEPARTMENT DETERMINES IS NECESSARY TO IMPLEMENT THIS CHAPTER.

~~[F.]~~ **C. TIME FOR SUBMITTAL.**

1. Within ~~[sixty (60)]~~ **FORTY-FIVE (45)** calendar days after receipt of the **FINAL** forest conservation plan, the ~~[commission or agent]~~ **DEPARTMENT** shall notify the applicant whether the forest conservation plan is complete and approved.
2. If the ~~[commission or agent]~~ **DEPARTMENT** fails to notify the applicant within ~~[sixty (60)]~~ **FORTY-FIVE (45)** calendar days, the plan shall be treated as complete and approved.
3. The ~~[commission]~~ **DEPARTMENT** 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 Department may extend the deadline under extenuating circumstances.
5. The applicant ~~[will pay for the review of the forest conservation plan at forty dollars (\$40.00) per hour before approval is issued.]~~ **SHALL PAY FOR THE REVIEW OF THE FINAL FOREST CONSERVATION PLAN. FEES ARE TO BE ESTABLISHED FROM TIME TO TIME BY POLICY, RESOLUTION, OR ORDINANCE BY THE TOWN AND SHALL BE PAID AT TIME OF APPLICATION.**

~~[G.]~~ **D.** The Commission's review of a **FINAL** forest conservation plan shall be concurrent with the review of the ~~[preliminary]~~ **FINAL** subdivision ~~[plat]~~ or ~~[site]~~ **PROJECT** plan, **GRADING PERMIT APPLICATION, OR SEDIMENT CONTROL APPLICATION** associated with the project.

~~[H.]~~ **E.** The ~~[commission]~~ **DEPARTMENT** may revoke an approved forest conservation plan if it finds that:

1. ~~[Any]~~ **A** provision of the plan has been violated;
2. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
3. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.

~~[I.]~~ **F.** The ~~[commission]~~ **DEPARTMENT** may issue a stop work order against ~~[any]~~ **A** person who violates ~~[any]~~ **A** provision of this Chapter or ~~[any]~~ **A** regulation, order, approved **FOREST CONSERVATION** plan or ~~[management]~~ **MAINTENANCE** agreement.

~~[J.]~~ **G.** ~~[Prior to]~~ **BEFORE** revoking approval of a forest conservation plan, the ~~[commission]~~ **DEPARTMENT** shall notify the violator in writing and provide an opportunity for a hearing.

~~K.~~ ~~If a forest conservation plan is required by this article, a person may not cut, clear, or grade on the development site until the commission has approved the plan or if the person is in violation of an approved plan.~~

~~16.48.130 Retention and afforestation.]~~

ARTICLE VII – AFFORESTATION AND RETENTION.

16.48.100 – AFFORESTATION REQUIREMENT.

A. A person ~~[who applies]~~ **MAKING APPLICATION** after January 1, 1993 for subdivision **OR PROJECT PLAN** approval, a grading permit, or a sediment control permit for an area of land of ~~[twenty thousand (20,000)]~~ **FORTY THOUSAND (40,000)** square feet or ~~[more]~~ **GREATER, SHALL:**

1. ~~[Shall]~~ Conduct afforestation on the lot or parcel in accordance with the following:
~~[a. For the following land use categories, a site 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:]~~
 - a. **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 CATEGORIES:**
 - i. **AGRICULTURAL AND RESOURCE AREAS; AND,**
 - ii. **MEDIUM DENSITY RESIDENTIAL AREAS;**
 - b. **A TRACT HAVING LESS THAN FIFTEEN (15) PERCENT OF THE NET TRACT IN AREA IN FOREST COVER SHALL BE AFFORESTED UP TO AT LEAST FIFTEEN (15) PERCENT OF THE NET TRACT AREA FOR THE FOLLOWING LAND CATEGORIES:**
 - i. **INSTITUTIONAL DEVELOPMENT AREAS;**
 - ii. **HIGH DENSITY RESIDENTIAL AREAS;**
 - iii. **MIXED USE AND PLANNED UNIT DEVELOPMENT AREAS; AND**
 - iv. **COMMERCIAL AND INDUSTRIAL AREAS.**~~[i. Institutional development areas;]
[ii. High density residential areas;]
[iii. Mixed use [and planned unit development areas; and]
[iv. Commercial and industrial use areas.]~~

~~[2. Shall comply with the standards set forth in COMAR when cutting into forest cover that is] currently below these afforestation percentages.]~~

B. Comply with the following when cutting into forest cover that is currently below the afforestation percentageS described in ~~[subsection (A)(1) and (2)]~~ **§16.48.100.A.1.** of this ~~[section]~~ **CHAPTER:**

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.

~~[C.]~~ **16.48.110 – RETENTION.**

A. The following trees, shrubs, plants, and specific areas ~~[shall be]~~ **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 Commission, that reasonable efforts have been made to protect them and the plan cannot ~~[be]~~ reasonably **BE** altered:

1. 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; **AND**

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

B. 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 COMMISSION, THAT THE APPLICANT QUALIFIES FOR A VARIANCE IN ACCORDANCE WITH §16.48.180 OF THIS CHAPTER:

- ~~[3.]~~ 1. Trees, shrubs, or plants ~~[identified on the list of]~~ **DETERMINED TO BE** rare, threatened, ~~[and]~~ **OR** endangered ~~[species]~~ under:
 - a. The **FEDERAL** Endangered Species Act of 1973 in 16 U.S.C. ~~[Sections]~~ §§1531—1544 and in 50 CFR 17 ~~[or under COMAR, 08.08.08];~~
 - b. **THE MARYLAND NONGAME AND ENDANGERED SPECIES CONSERVATION ACT, NATURAL RESOURCES ARTICLE, §§10-2A-01—10-2A-09, ANNOTATED CODE OF MARYLAND; AND**
 - c. **COMAR 08.03.08;**
- ~~[4.]~~ 2. Trees that:
 - a. Are part of a historic site;
 - b. Are associated with a historic structure; or
 - c. Have been designated by the State or the Department as a national, State, or county champion tree; **AND**
- ~~[5.]~~ 3. **ANY** tree[s] having a diameter measured at 4.5 feet above the ground of:
 - a. Thirty (30) inches or more; or
 - b. Seventy-five (75) percent **OR MORE** of the diameter, measured at 4.5 feet above the ground, of the current State champion tree of that species as designated by the State of Maryland Department of Natural Resources.

ARTICLE VIII – REFORESTATION.

~~[16.48.140—Reforestation.]~~ **16.48.120 – FOREST CONSERVATION THRESHOLD.**

- A. There is a forest conservation threshold established for all land use categories, as provided in Subsection B **OF THIS ARTICLE**. The forest conservation threshold means the percentage of the ~~[new]~~ **NET** tract area at which the reforestation requirement changes from a ratio of one-fourth (¼) 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 ~~[every]~~ reasonable effortS to minimize the cutting or clearing of trees and other woody plants ~~[is]~~ **HAVE BEEN** exhausted in the development of a subdivision ~~[plan]~~ **OR PROJECT PLAN**, ~~[and]~~ grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, **PURCHASE OF CREDITS FROM A FOREST MITIGATION BANK**, or payment into the forest conservation fund, according to the formula set forth in SubsectionS **(B) AND (C) OF THIS ARTICLE** and consistent with **§16.48.070 OF THIS CHAPTER**, **AND** the following forest conservation thresholdS for the applicable land use category:

<i>Category of Use</i>	<i>Threshold Percentage</i>
(1) Agricultural and Resource [Conservation] AREAS	50%
(3) MEDIUM DENSITY RESIDENTIAL AREAS	25%
(4) Institutional Development Areas	20%

(5) High Density Residential Areas	20%
(6) Mixed Use and Planned Unit Development Areas	15%
(7) Commercial and Industrial Use Areas	15%

C. CALCULATIONS.

1. ~~[If the percentage of forest cover remaining on the net tract area after cutting or clearing are completed, equals or exceeds the threshold established by the section, the site]~~ **FOR ALL EXISTING FOREST COVER MEASURED TO THE NEAREST ONE-TENTH (1/10) ACRE CLEARED ON THE NET TRACT AREA ABOVE THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED** shall be reforested at a ratio of one-fourth (1/4) acre planted for ~~[every]~~ **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 ~~[subsection (C)(1)]~~ **PARAGRAPH (1) OF THIS SUBSECTION. THE CALCULATION OF THE CREDIT SHALL BE ACCORDING TO THE CRITERIA PROVIDED IN THE FOREST CONSERVATION TECHNICAL MANUAL.**
3. ~~[If the percentage of forest cover remaining on the net tract area after cutting and clearing are completed is less than the threshold established by this section, the site]~~ **FOR ALL EXISTING FOREST COVER MEASURED TO THE NEAREST ONE-TENTH (1/10) ACRE CLEARED ON THE NET TRACT AREA BELOW THE APPLICABLE FOREST CONSERVATION THRESHOLD, THE AREA OF FOREST REMOVED** shall be reforested at a ratio of two (2) acres planted for ~~[every]~~ **EACH** acre removed **BELOW THE THRESHOLD.**

~~[16.48.150]~~ **ARTICLE IX - Priorities and Time Requirements for Afforestation and Reforestation.**

16.48.130 – SEQUENCE FOR AFFORESTATION AND REFORESTATION.

- A. ~~[The recommended sequence for forest conservation,]~~ After techniques for retaining existing forest on the site have been exhausted, **THE PREFERRED SEQUENCE FOR AFFORESTATION AND REFORESTATION, AS DETERMINED BY THE DEPARTMENT,** is as follows:
- ~~[1.— Selective clearing and supplemental planting on site;]~~
 - ~~[2.— On-site afforestation, or reforestation, if economically feasible, using transplanted or nursery] [stock that is greater than 1.5 inches in diameter measured at 4.5 feet above the ground;]~~
 - ~~[3.— On-site afforestation, or reforestation, using whips and shelters;]~~
 - ~~[4.— Landscaping of areas under an approved landscaping plan that establishes a forest that is at] [least thirty five (35) feet wide and covers two thousand five hundred (2,500) square feet of] [area;]~~
 - ~~[5.— Off-site afforestation, or reforestation, using transplanted or nurser stock that is greater than 1.5] [inches diameter measured at 4.5 feet above the ground;]~~
 - ~~[6.— Off-site afforestation, or reforestation, using whip and shelters.]~~
1. **FOREST CREATION IN ACCORDANCE WITH A FOREST CONSERVATION PLAN USING ONE OR MORE OF THE FOLLOWING:**
- a. **TRANSPLANTED OR NURSERY STOCK;**
 - b. **WHIP AND SEEDLING STOCK; OR**
 - c. **NATURAL REGENERATION WHERE IT CAN BE ADEQUATELY SHOWN TO MEET THE OBJECTIVE OF THE FOREST CONSERVATION TECHNICAL MANUAL;**

2. **IN A MUNICIPAL CORPORATION WITH A TREE MANAGEMENT PLAN AND IN AN EXISTING POPULATION CENTER DESIGNATED IN THE COUNTY MASTER PLAN THAT HAS BEEN ADOPTED TO CONFORM WITH THE ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING ACT OF 1992, OR IN ANY OTHER DESIGNATED AREA APPROVED BY THE DEPARTMENT, THE USE OF:**
 - a. **STREET TREES AS A PERMISSIBLE STEP IN THE PRIORITY SEQUENCE FOR AFFORESTATION OR REFORESTATION AND WITH A MATURE CANOPY COVERAGE MAY BE GRANTED FULL CREDIT AS A MITIGATION TECHNIQUE; AND**
 - b. **ACQUISITION OF AN OFF-SITE PROTECTION EASEMENT ON EXISTING FORESTED AREAS NOT CURRENTLY PROTECTED IN PERPETUITY AS A MITIGATION TECHNIQUE, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT GRANTED MAY NOT EXCEED FIFTY (50) PERCENT OF THE AREA OF FOREST COVER PROTECTED;**
 3. **WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE CONDUCTED UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST OF AT LEAST THIRTY-FIVE (35) FEET WIDE AND COVERING AT LEAST TWO-THOUSAND-FIVE-HUNDRED (2,500) SQUARE FEET OF AREA.**
- B. A sequence other than the one described in Subsection A of this ~~[section]~~ ARTICLE may be used for a specific project, if necessary, to achieve the objectives of the ~~[county]~~ TOWN land use plan or ~~[county]~~ TOWN land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.
- C. The following ~~[shall be]~~ **ARE** considered A priority for afforestation and reforestation:
1. ~~[Establish or]~~ **THOSE TECHNIQUES THAT** enhance **EXISTING** forest ~~[buffers adjacent to intermittent and perennial streams to widths of at least fifty (50) feet]~~ **AND INVOLVE SELECTIVE CLEARING OR SUPPLEMENTAL PLANTING ON-SITE;**
 2. **ON-SITE AFFORESTATION OR REFORESTATION WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED, USING METHODS SELECTED IN ACCORDANCE WITH SUBSECTION F OF THIS ARTICLE, AND THE LOCATION BEING SELECTED IN ACCORDANCE WITH THIS SUBSECTION;**
 3. **OFF-SITE AFFORESTATION OR REFORESTATION IN THE SAME WATERSHED OR IN ACCORDANCE WITH AN APPROVED MASTER PLAN WHERE THE APPLICANT HAS DEMONSTRATED THAT NO REASONABLE ALTERNATIVE ON-SITE EXISTS, OR WHERE:**
 - a. **ANY ON-SITE PRIORITY AREAS FOR AFFORESTATION OR REFORESTATION HAVE BEEN PLANTED IN ACCORDANCE WITH THIS SUBSECTION; AND**
 - b. **THE APPLICANT HAS JUSTIFIED TO THE COMMISSION'S SATISFACTION THAT ENVIRONMENTAL BENEFITS ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION EXCEED THOSE DERIVED FROM ON-SITE PLANTING.**
- D. **IN THE CASES CITED IN SUBSECTION C OF THIS ARTICLE, THE METHOD SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION F OF THIS ARTICLE AND THE LOCATION SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION C OF THIS ARTICLE.**
- E. **OFF-SITE AFFORESTATION OR REFORESTATION MAY INCLUDE THE USE OF FOREST MITIGATION BANKS, WHICH HAVE BEEN SO DESIGNATED IN ADVANCE BY THE DEPARTMENT.**

F. STANDARDS FOR MEETING AFFORESTATION OR REFORESTATION REQUIREMENTS SHALL BE ESTABLISHED USING ONE OR MORE OF THE FOLLOWING METHODS:

- ~~[2.]~~ **1. ESTABLISH OR ENHANCE FOREST BUFFERS ADJACENT TO INTERMITTENT AND PERENNIAL STREAMS, AND THEIR BUFFERS, TO WIDTHS OF AT LEAST 50 FEET;**
2. Establish or enhance ~~[non]~~forested areas ~~[on]~~ **IN** one hundred (100) year floodplains ~~[, when appropriate];~~
3. Establish or increase existing forested corridors to connect existing forests within or adjacent to the site~~[-]~~ **AND** where practical, forested corridors should be a minimum of three hundred (300) feet in width to facilitate wildlife movement;
4. Establish or enhance forest buffers adjacent to critical habitats where appropriate;
5. Establish planting to stabilize slopes of twenty-five (25) percent or greater and slopes of fifteen (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 adjacent to areas of differing land use ~~[where]~~ **WHEN** appropriate, or adjacent to highways or utility rights-of-way;
7. Establish forest areas adjacent to existing forests ~~[so as]~~ to increase the overall area of contiguous forest cover, when appropriate; and
8. Use native plant materials for afforestation or reforestation, when appropriate.
- ~~[D.]~~ **G.** A person required to conduct afforestation or reforestation under this Chapter shall accomplish ~~[the reforestation]~~ **IT** within one (1) year or two (2) growing seasons, whichever is **A greater TIME PERIOD**, following ~~[the approval and recording in Frederick County's records of the final]~~ development ~~plat~~ **PROJECT COMPLETION**.

~~[16.48.160]~~ **ARTICLE X - Payment ~~[in lieu]~~ INSTEAD of Afforestation and Reforestation.**

16.48.140 – FOREST CONSERVATION FUND.

- A. There is ~~[created]~~ **ESTABLISHED** an "Emmitsburg Forest Conservation Fund ~~[-]~~" **THAT MEETS THE REQUIREMENTS OF NATURAL RESOURCES ARTICLE, §5-1610(H-1), ANNOTATED CODE OF MARYLAND.**
- B. If a person subject to this ~~[article]~~ **CHAPTER** demonstrates to the satisfaction of the Commission that **REQUIREMENTS FOR** reforestation or afforestation onsite or offsite cannot be reasonably accomplished **AND APPROPRIATE CREDITS GENERATED BY A FOREST MITIGATION BANK IN THE SAME COUNTY OR WATERSHED ARE NOT AVAILABLE**, the person shall contribute money ~~[, at a rate of thirty cents (\$0.30) per square foot of the area of required planting,]~~ into the Town's Forest Conservation Fund:
- 1. FOR A PROJECT INSIDE A PRIORITY FUNDING AREA, AS DEFINED IN NATURAL RESOURCES ARTICLE, §5-1610, ANNOTATED CODE OF MARYLAND, AT A RATE OF 30.5 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING WITH THE AMOUNT ADJUSTED BY THE DEPARTMENT BASED ON THE PREVIOUS YEAR'S INFLATION RATE; AND**
 - 2. FOR A PROJECT OUTSIDE A PRIORITY FUNDING AREA, AT A RATE OF 36.6 CENTS PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING.**
- C. Money contributed ~~[in lieu]~~ **INSTEAD** of afforestation or reforestation under this ~~[subsection]~~ **ARTICLE** shall be paid within ninety (90) calendar days of the approval the preliminary subdivision plat, ~~[or]~~ site plan~~[-]~~ **PROJECT PLAN, GRADING PERMIT APPLICATION, OR SEDIMENT CONTROL APPLICATION.**

D. THE TOWN SHALL ACCOMPLISH THE REFORESTATION OR AFFORESTATION FOR THE EQUIVALENT NUMBER OF ACRES FOR WHICH THE MONEY IS DEPOSITED WITHIN ~~[Money contributed under this section shall remain in the account for a period of]~~ two (2) years or three (3) growing seasons, whichever is a greater time period **AFTER RECEIPT OF THE MONEY.** ~~[At the end of that time, any part that has not been used to meet the afforestation or reforestation requirements shall be returned to the person who provided the money.]~~

~~[E. Money contributed under this section shall remain in the account for a period of two years, or three] growing seasons.]~~

~~[F.]~~ **E. Money** ~~[contributed under this section]~~ **DEPOSITED IN THE TOWN'S FOREST CONSERVATION FUND:**

1. May be ~~[used only for]~~ **SPENT ON THE COSTS DIRECTLY RELATED TO** reforestation and afforestation, including site identification, acquisition, ~~[and] preparation[;],~~ **MAINTENANCE OF EXISTING FORESTS,** ~~[and no more than twenty (20) percent for administration; and for maintenance of existing forests that are protected by a long term protective agreement as defined in this chapter;]~~ and ~~[for]~~ achieving urban canopy goals;
2. Shall be deposited in a separate forest conservation fund; and ~~[if this cannot be accomplished] [then the commission can decide to allow reforestation or afforestation to occur in the county] [or watershed in the state in which the project is located;]~~
3. ~~[Shall]~~ **MAY** not revert to the general fund.

~~[G.]~~ **F. SITES FOR AFFORESTATION OR REFORESTATION USING FUND MONEY.**

1. Except as provided in ~~[paragraph]~~ **SUBSECTION F (2)** of this ~~[subsection]~~ **ARTICLE,** the reforestation or afforestation requirement under this ~~[subsection]~~ **ARTICLE** shall occur within the corporate limits of the Town.
2. If the reforestation or afforestation cannot be reasonably accomplished ~~[on the subject property, or] within the corporate limits of the Town~~ **OR OTHER TOWN OWNED PROPERTY WITHIN THE COUNTY,** then the reforestation or afforestation shall occur ~~[on other town-owned property] within the County [;]~~ **WATERSHED IN THE STATE IN WHICH THE PROJECT IS LOCATED.** ~~[on a property that has been previously approved as a participant in the Frederick County Forest Banking Program.]~~

ARTICLE X-1 – PAYMENT BY CREDITS FROM A FOREST MITIGATION BANK

16.48.150 – USE OF FOREST MITIGATION BANK

- A. IF A PERSON SUBJECT TO THIS CHAPTER DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT REQUIREMENTS FOR REFORESTATION OR AFFORESTATION ONSITE OR OFFSITE CANNOT BE REASONABLY ACCOMPLISHED, THE PERSON MAY CONTRIBUTE CREDITS FROM A FOREST MITIGATION BANK. A CREDIT IS REQUIRED FOR EACH TENTH OF AN ACRE OF AN AREA OF REQUIRED PLANTING.**
- B. THE CREDITS SHALL BE DEBITED FROM AN APPROVED FOREST MITIGATION BANK WITHIN 90 CALENDAR DAYS AFTER DEVELOPMENT PROJECT COMPLETION.**

ARTICLE X-2 – ESTABLISHING FOREST MITIGATION BANKS.

16.48.160 – FOREST MITIGATION BANKS.

- A. A PERSON MAY CREATE A FOREST MITIGATION BANK FROM WHICH APPLICANTS MAY PURCHASE CREDITS TO MEET THE AFFORESTATION AND REFORESTATION REQUIREMENTS OF THIS CHAPTER.**
- B. THE FOREST MITIGATION BANK SHALL:**

1. AFFOREST OR REFOREST AN AREA OF LAND IN ACCORDANCE WITH A FOREST MITIGATION BANK AGREEMENT;
 2. BE PROTECTED BY AN EASEMENT, DEED RESTRICTIONS, OR COVENANTS WHICH REQUIRE THE LAND IN THE BANK TO REMAIN FORESTED IN PERPETUITY AND ARE ENFORCEABLE BY THE DEPARTMENT AND THE DEPARTMENT OF NATURAL RESOURCES;
 3. LIMIT THE USE OF THE LAND IN THE BANK TO THOSE ACTIVITIES WHICH ARE NOT INCONSISTENT WITH FOREST CONSERVATION SUCH AS RECREATIONAL ACTIVITIES, FOREST MANAGEMENT UNDER A FOREST CONSERVATION AND MANAGEMENT PROGRAM UNDER TAX PROPERTY ARTICLE, §8-211, ANNOTATED CODE OF MARYLAND, OR ACTIVITIES SPECIFIED IN A FOREST MANAGEMENT PLAN PREPARED BY A LICENSED FORESTER AND APPROVED BY THE DEPARTMENT;
 4. USE NATIVE PLANT MATERIALS FOR AFFORESTATION OR REFORESTATION UNLESS INAPPROPRIATE; AND
 5. CAUSE TREES TO BE PLANTED WHICH,
 - i. ESTABLISH OR ENHANCE FORESTED BUFFERS ADJACENT TO INTERMITTENT AND PERENNIAL STREAMS TO WIDTHS OF AT LEAST 50 FEET;
 - ii. ESTABLISH OR INCREASE EXISTING FORESTED CORRIDORS, WHICH, WHERE PRACTICAL, SHOULD BE A MINIMUM OF 300 FEET IN WIDTH TO FACILITATE WILDLIFE MOVEMENT, TO CONNECT EXISTING FORESTS WITHIN OR ADJACENT TO THE SITE;
 - iii. ESTABLISH OR ENHANCE FORESTED BUFFERS ADJACENT TO CRITICAL HABITATS WHERE APPROPRIATE;
 - iv. ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR FLOODPLAINS;
 - v. STABILIZE SLOPES OF 25 PERCENT OR GREATER;
 - vi. STABILIZE SLOPES OF 15 PERCENT OR GREATER WITH A SOIL K VALUE GREATER THAN 0.35 INCLUDING THE SLOPES OF RAVINES OR OTHER NATURAL DEPRESSIONS;
 - vii. ESTABLISH BUFFERS ADJACENT TO AREAS OF DIFFERING LAND USE WHERE APPROPRIATE, OR ADJACENT TO HIGHWAYS OR UTILITY RIGHTS-OF-WAY; OR
 - viii. ESTABLISH FOREST AREAS ADJACENT TO EXISTING FORESTS TO INCREASE THE OVERALL AREA OF CONTIGUOUS FOREST COVER, WHEN APPROPRIATE.
- C. A PERSON PROPOSING TO CREATE A FOREST MITIGATION BANK SHALL SUBMIT TO THE DEPARTMENT A:
1. COMPLETED APPLICATION ON A FORM APPROVED BY THE DEPARTMENT WHICH HAS BEEN SIGNED BY AN AUTHORIZED INDIVIDUAL IN CONFORMANCE WITH COMAR 08.19.04.02I;
 2. FOREST MITIGATION BANK PLAN WHICH CONTAINS A:
 - i. VICINITY MAP OF THE PROPOSED MITIGATION BANK SITE;
 - ii. SIMPLIFIED FOREST STAND DELINEATION WHICH MEETS THE CRITERIA IN COMAR 08.19.04.02;
 - iii. DETAILED AFFORESTATION OR REFORESTATION PLAN, WHICH SHALL INCLUDE A TIMETABLE AND DESCRIPTION OF THE SITE AND SOIL PREPARATION NEEDED, SPECIES, SIZE, AND SPACING

TO BE UTILIZED, PREPARED BY A LICENSED MARYLAND FORESTER, A LICENSED LANDSCAPE ARCHITECT, OR A QUALIFIED PROFESSIONAL WHO MEETS THE REQUIREMENTS STATED IN COMAR 08.19.06.01A; AND

- iv. PROPOSED 2-YEAR MAINTENANCE AGREEMENT THAT:**
 - 1. SETS FORTH HOW THE AREAS AFFORESTED OR REFORESTED WILL BE MAINTAINED TO ENSURE PROTECTION AND SATISFACTORY ESTABLISHMENT;**
 - 2. COMPLIES WITH COMAR 08.19.04.05C(4)(A); AND**
 - 3. INCLUDES WATERING AND REINFORCEMENT PLANTING PROVISIONS IF SURVIVAL FALLS BELOW REQUIRED STANDARDS;**
 - 3. COPY OF THE DEED TO THE PROPERTY;**
 - 4. SURVEY OR OTHER LEGALLY SUFFICIENT DESCRIPTION OF THE BANK SITE FOR INCLUSION IN THE DEEDS OF EASEMENT, DEED RESTRICTIONS, OR COVENANTS;**
 - 5. TITLE REPORT OR OTHER ASSURANCE THAT:**
 - i. THE PROPERTY IS NOT ENCUMBERED BY ANY COVENANTS OR OTHER TYPES OF RESTRICTIONS WHICH WOULD IMPAIR THE PROPERTY'S USE AS A FOREST MITIGATION BANK; AND**
 - ii. THERE IS LEGALLY SUFFICIENT ACCESS TO THE FOREST MITIGATION BANK SITE WHICH CAN BE USED BY THE DEPARTMENT AND ITS ASSIGNEES TO INSPECT THE FOREST MITIGATION BANK; AND**
 - 6. DESCRIPTION OF THE SYSTEM TO BE USED BY THE PERSON OWNING AND OPERATING THE FOREST MITIGATION BANK TO IDENTIFY AND KEEP TRACK OF WHICH PORTIONS OF THE BANK HAVE BEEN DEBITED TO MEET AN APPLICANT'S OFFSITE AFFORESTATION OR REFORESTATION REQUIREMENTS.**
- D. THE OWNER OF AN APPROVED FOREST MITIGATION BANK SHALL ENTER INTO AN AGREEMENT WITH THE DEPARTMENT WHICH CONTAINS:**
- 1. THE APPROVED REFORESTATION OR AFFORESTATION PLAN;**
 - 2. THE APPROVED SYSTEM FOR MARKING AND TRACKING WHICH PORTIONS OF THE BANK HAVE BEEN DEBITED; AND**
 - 3. AN ACKNOWLEDGMENT THAT THE BANK MAY NOT DEBIT ANY PORTION OF THE AFFORESTED OR REFORESTED LAND UNTIL 2 YEARS OF SUCCESSFUL GROWTH HAS BEEN ACHIEVED UNLESS THE BANKER HAS POSTED A BOND OR ALTERNATE FORM OF SECURITY.**

~~[16.48.170]~~ **ARTICLE XI - Recommended Tree Species.**

16.48.170 – RECOMMENDED TREE SPECIES LIST.

- A. Tree species used for afforestation or reforestation shall be native to the county, when appropriate, and selected from a list of approved species established by the ~~[Commission]~~ DEPARTMENT.**
- B. The ~~[Commission]~~ DEPARTMENT shall adopt ~~[regulations establishing]~~ a list of tree species ~~[native to the county]~~ to be used for **ANY REQUIRED** afforestation or reforestation.**

~~[16.48.180—Surety]~~ **ARTICLE XII – FINANCIAL SECURITY for Afforestation and Reforestation.**

16.48.180 – BONDING.

- A. A person required to conduct afforestation or reforestation under this ~~[article]~~ **CHAPTER** shall furnish ~~[surety]~~ **FINANCIAL SECURITY** in the form of **A BOND**, an irrevocable letter of credit, ~~[drawn on a Frederick County bank]~~ or other security approved by the ~~[commission]~~ **DEPARTMENT**. The surety shall:
1. Assure that the afforestation, reforestation, and **THE** associated ~~[management plan]~~ **MAINTENANCE AGREEMENT** are conducted and maintained in accordance with the approved forest conservation plan;
 2. Be in the amount equal to the estimated cost, as determined by the ~~[commission]~~ **DEPARTMENT**, of afforestation ~~[or]~~ **AND** reforestation; plus administration and inspection costs of twenty (20) percent; and
 3. Be in a form and of a content approved by the **DEPARTMENT AND** Town Attorney.
- B. ~~[If after one growing season the planting associated with the afforestation or reforestation meet or exceed the standards of the forest conservation manual, the town shall notify the appropriate entity that liability has been reduced by fifty (50) percent.]~~ **AFTER ONE GROWING SEASON, THE PERSON REQUIRED TO FILE A BOND UNDER §16.48.180.A. OF THIS ARTICLE MAY REQUEST REDUCTION OF THE AMOUNT OF THE BOND OR OTHER FINANCIAL SECURITY BY SUBMITTING A WRITTEN REQUEST TO THE DEPARTMENT WITH A JUSTIFICATION FOR REDUCING THE BOND OR OTHER FINANCIAL SECURITY AMOUNT, INCLUDING ESTIMATED OR ACTUAL COSTS TO ENSURE AFFORESTATION OR REFORESTATION REQUIREMENTS ARE MET.**
- C. ~~[If after two growing seasons the plantings associated with the afforestation or reforestation meet or exceed the standards of the forest conservation manual, the town shall notify the appropriate entity that liability has been reduced to zero (0) percent.]~~ **THE DEPARTMENT SHALL DETERMINE WHETHER A LESSER AMOUNT IS SUFFICIENT TO COVER THE COST OF AFFORESTATION OR REFORESTATION, TAKING INTO ACCOUNT THE FOLLOWING:**
1. **THE NUMBER OF ACRES;**
 2. **THE PROPOSED METHOD OF AFFORESTATION OR REFORESTATION;**
 3. **THE COST OF PLANTING MATERIALS OR REPLACEMENT MATERIALS;**
 4. **THE COST OF MAINTENANCE OF THE AFFORESTATION OR REFORESTATION PROJECT; AND**
 5. **OTHER RELEVANT FACTORS.**
- D. **IF, AFTER TWO GROWING SEASONS, THE PLANTINGS ASSOCIATED WITH THE AFFORESTATION OR REFORESTATION MEET OR EXCEED THE STANDARDS OF THE FOREST CONSERVATION TECHNICAL MANUAL, THE AMOUNT OF THE CASH, BOND, LETTER OF CREDIT, SURETY BOND, OR OTHER SECURITY SHALL BE RETURNED OR RELEASED.**
- ~~[D.]~~ E. The local forest conservation program will incorporate the financial security set forth in **§16.48.180 A—D** of this article ~~[and]~~ **OR** in COMAR 08.19.05.01.B.

~~[16.48.190]~~ **ARTICLE XIII** - Standards for Protecting Trees from Construction Activities.

16.48.190 – PROTECTION DEVICES.

- A. The Town shall adopt standards for the protection of trees from construction activity. ~~[that are at least as effective as the standards set forth in the state of Maryland 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 chapter, the ~~[developer]~~ **APPLICANT** shall demonstrate to the ~~[commission]~~ **DEPARTMENT** that protective devices have been established.

~~[16.48.200]~~ **ARTICLE XIV** - Variances.

16.48.200 – PROCEDURE.

- A. **A PERSON MAY REQUEST A VARIANCE FROM THIS CHAPTER OR THE REQUIREMENTS OF NATURAL RESOURCE ARTICLE, §§5-1601—5-1612, ANNOTATED CODE OF MARYLAND, IF THE PERSON DEMONSTRATES THAT ENFORCEMENT WOULD RESULT IN UNWARRANTED HARDSHIP TO THE PERSON.** The TOWN'S Board of Appeals may grant a variance to this ~~[article]~~ **CHAPTER** in accordance with this section.
- B. ~~[In order to grant a variance to this article, the Board of Appeals issue specific written findings of fact demonstrating that the granting of variance]~~ **THE APPLICANT FOR A VARIANCE SHALL:**
 - 1. ~~[Was due to]~~ **DESCRIBE THE special CONDITIONS PECULIAR TO THE PROPERTY WHICH WOULD CAUSE THE** ~~[features of the particular site or other circumstances, and that implementation of this article would result in]~~ unwarranted hardship ~~[to an applicant];~~
 - 2. ~~[Was because the]~~ **DESCRIBE HOW** enforcement of these rules ~~[would]~~ **WILL** deprive the applicant of rights commonly enjoyed by others in similar areas;
 - 3. ~~[Would]~~ **VERIFY THAT THE GRANTING OF THE VARIANCE WILL** not confer on the applicant a special privilege that would be denied to other applicants;
 - 4. ~~[Was]~~ **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~~[:]~~.
 - ~~[7. Is designed in a manner consistent with the spirit and intent of this article; and]~~
 - ~~[8. The application to the board of appeals for a variance to this article and public hearing shall take place the same as for request for a variance to the zoning regulations.]~~
- C. The Board **OF APPEALS** shall make findings that the applicant has met the requirements in Subsections A and B of this ~~[section]~~ **ARTICLE** before the Board may grant a variance.
- D. Notice of a request for a variance shall be given to the Department of Natural Resources within fifteen (15) days of receipt of a request for a variance.
- E. There is established by this Chapter 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, ~~[Section]~~ **§§5-1601—5-1612, Annotated Code of Maryland, or this Chapter.**

~~[16.48.210—Violations]~~ **ARTICLE XV - Penalties.**
16.48.210 – ENFORCEMENT.

A. NONCOMPLIANCE FEES.

1. A person found to be in noncompliance with this ~~[article]~~ **CHAPTER**, regulations adopted under this ~~[article]~~ **CHAPTER**, the forest conservation plan, or the associated two-year ~~[management]~~ **MAINTENANCE** agreement, shall be assessed by the ~~[commission]~~ **DEPARTMENT**, the penalty of thirty cents (\$0.30) per square foot of the area found to be in noncompliance with required forest conservation.
2. Money collected under ~~[subparagraph (1) of this]~~ Subsection **A(1) OF THIS ARTICLE** shall be deposited in the forest conservation fund required by ~~[Section 16.52.150]~~ **ARTICLE X OF THIS CHAPTER**, and may be used by the ~~[commission]~~ **DEPARTMENT** for purpose~~[s]~~ related to implementing this ~~[article]~~ **CHAPTER**.

B. VIOLATION.

1. In addition to the provisions under Subsection A of this ~~[section]~~ **ARTICLE**, a person who violates ~~[any]~~ A provision of this ~~[article]~~ **CHAPTER** or ~~[any]~~ A regulation or order adopted or issued under this ~~[article]~~ **CHAPTER**~~;~~ is liable for a penalty not **TO** exceed~~[ing]~~ one thousand dollars (\$1,000.00), which may be recovered in a civil action brought by the Department.
 2. Each day a violation continues is a separate violation.
- C. The ~~[commission]~~ **DEPARTMENT** may seek an injunction requiring the person to cease violation of this Chapter and take corrective action to restore or reforest an area.
- D. The local program ~~[will]~~ **MAY** adopt the enforcement provisions under COMAR 08.19.06.03.
- E. THE LOCAL PROGRAM SHALL PROVIDE TO THE DEPARTMENT NOTICE OF AN ENFORCEMENT ACTION WITHIN 15 DAYS AFTER THE COMMENCEMENT OF ENFORCEMENT BY THE LOCAL PROGRAM.**

~~[16.48.220]~~ **ARTICLE XVI - Annual Report.**

16.48.220 – ANNUAL REPORT.

A. On or before March ~~[31]~~ **1** of each year, the ~~[commission]~~ **DEPARTMENT** shall submit to the ~~[Senate Economic and Environmental Affairs Committee and the House Environmental Matters Committee]~~ **DEPARTMENT OF NATURAL RESOURCES**~~;~~ a report ~~[on]~~ **WHICH CONTAINS THE:**

- ~~[A:]~~ **1. [The] Number, location, and type of projects subject to the provisions of this [article] CHAPTER;**
- ~~[B:]~~ **2. [The] Amount and location of acres cleared, conserved, and planted, INCLUDING ANY AREAS LOCATED IN THE ONE HUNDRED (100) YEAR FLOODPLAIN, in connection with a development project;**
- ~~[C:]~~ **3. [The] Amount of reforestation and afforestation fees and noncompliance penalties collected and expended, THE NUMBER OF ACRES FOR WHICH THE FEES WERE COLLECTED, AND THE NUMBER OF ACRES REFORESTED, AFFORESTED, OR CONSERVED USING THE FEES; [and]**
- ~~[D:]~~ **4. [The] Costs of implementing the Forest Conservation Program[-];**
- 5. LOCATION AND SIZE OF ALL FOREST MITIGATION BANKS APPROVED DURING THE PAST YEAR WITH A DESCRIPTION OF THE PRIORITY AREAS AFFORESTED OR REFORESTED BY THE BANK;**
- 6. NUMBER OF ACRES DEBITED FROM EACH FOREST MITIGATION BANK SINCE THE LAST ANNUAL REPORT;**
- 7. FOREST MITIGATION BANKS INSPECTED SINCE THE LAST ANNUAL REPORT.**

8. NUMBER, LOCATION, AND TYPES OF VIOLATIONS AND TYPES OF ENFORCEMENT ACTIVITIES CONDUCTED; AND
9. THE SIZE AND LOCATION OF ALL CONSERVED AND PLANTED FOREST AREAS SHALL BE SUBMITTED IN AN ELECTRONIC GEOGRAPHIC INFORMATION SYSTEM OR COMPUTER AIDED DESIGN FORMAT IF POSSIBLE. IF NOT POSSIBLE, THE LOCATION SHALL BE GIVEN BY MARYLAND STATE PLANE GRID COORDINATES AND 8 DIGIT SUBWATERSHED.

~~[16.48.230]~~ ARTICLE XVII - Biennial Review by the Department of Natural Resources.

16.48.230 – BIENNIAL REVIEW

A. The ~~[commission]~~ DEPARTMENT shall submit the necessary documentation to comply with COMAR 08.19.02.04.

~~[If the department notifies a local authority that the authority's program is in noncompliance, and the local authority has failed to comply with the terms of the notice within ninety (90) days, the department may do one of the following:~~

- ~~(1) Assume review and approval of all forest conservation plans and forest mitigation bank applications within the jurisdiction of the local authority until the deficiencies are corrected.~~
- ~~(2) On a finding by an auditor made in consultation with the office of the attorney general that a local authority has misappropriated local forest conservation funds, the department may require the local authority to submit payment to the state forest conservation fund for the amount of any misappropriated funds, and~~
- ~~(3) Request that the attorney general investigate payments and expenditures of funds collected by the local authority under this subtitle.~~

~~Article 5. — Short and Long Term Protective Agreements~~

~~16.48.240 — Short term protective agreements.~~

~~A. — Maintenance Agreements.~~

- ~~1. — Application. A person required to conduct afforestation or reforestation under a local or state program shall include in the forest conservation plan a binding maintenance agreement for the length of two years, as specified in the forest conservation manual.~~
- ~~2. — Approval procedures and timing shall be consistent with the procedures provided in the local program or as provided in COMAR 08.19.04.04.~~
- ~~3. — The maintenance agreement shall detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in Chapter 3 of the forest conservation manual.~~
- ~~4. — The person required to conduct the afforestation or reforestation, after this referred to as the "obligee," shall present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:
 - ~~a. — An executed deed conveying title to a selected site to the obligee;~~
 - ~~b. — An executed conservation easement agreement;~~
 - ~~c. — Written evidence of the landowners consent to the use of a selected site;~~
 - ~~d. — A fully executed option agreement, long term lease agreement, or contract of sale for a selected site; or~~
 - ~~e. — Other written evidence of a possessory or ownership interest in a selected site.~~~~
- ~~5. — The commission or the local authority shall be a signatory to the maintenance agreement, or shall be designated a third party beneficiary of the agreement.~~

6. The commission or local authority may not release a bond or end monitoring without receipt of a legally binding deed, long term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.
7. The maintenance agreement shall provide for access by the department or local authority to the afforestation or reforestation site.

B. Bonding.

1. Application.
 - a. A person required to conduct afforestation or reforestation, or to deposit money into a state or local fund under the state or local program shall include a bond or other financial security as an element of a forest conservation plan.
 - b. This section does not apply to agencies of any federal, state, county, or municipal government.
2. Requirements. A financial security shall be furnished in the form of:
 - a. A bond which shall be made payable to the department or local authority;
 - b. An irrevocable letter of credit which shall:
 - i. Be equivalent to the required bond;
 - ii. Be issued by a financial institution authorized to do business in Maryland;
 - iii. Expressly state that the total sum is guaranteed to be available and payable directly to the department on demand in the event of forfeiture, and
 - iv. Be in force until all mitigation for reforestation and afforestation and monitoring requirements have been fulfilled to the satisfaction of the department or local authority or until all contributions have been made to the state or local fund; or
 - v. Other security approved by the Department or local authority.
3. The financial security shall:
 - a. Ensure that:
 - i. The afforestation, reforestation and associated maintenance agreements are conducted and maintained in accordance with the approved forest conservation plan, or
 - ii. Contributions have been made to the State or local fund;
 - b. Be in the amount equal to the estimated cost of afforestation and reforestation, or the amount of the contribution due, as determined by the department or local authority;
 - c. Be in a form and content approved by the department or local authority.
4. The value of the financial security:
 - a. Shall be based on:
 - i. The cost to perform all work required by the afforestation or reforestation plan if the work had to be performed by or contracted out by the department or local authority, or
 - ii. When appropriate, the amount due for a fund contribution;
 - b. May be adjusted according to the actual cost of mitigation for afforestation and reforestation or, if the cost of future mitigation work changes, the department or local authority shall notify the obligee of a proposed adjustment and provide an opportunity for an informal conference on the adjustment; and
 - c. May be reduced if the obligee proves to the department or local authority that the costs to complete the mitigation project have been reduced.
5. A surety bond or other alternative form of security may not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:
 - a. The surety notifies the department and the obligee of its intent to cancel the bond, in writing, by registered mail, not less than ninety (90) days before cancellation; and
 - b. At least forty-five (45) days before the cancellation date indicated in the notice, the obligee files a commitment from a surety, bank or other issuing entity to provide a substitute security which will be effective on the cancellation date indicated in the notice.

6. After one growing season, the person required to file a bond or other financial security under this regulation may request reduction of the amount of the bond or other financial security by submitting a written request to the department with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure that the afforestation or reforestation requirements are met.
 7. The department shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
 - a. The number of acres;
 - b. The proposed method of afforestation or reforestation;
 - c. The cost of planting materials or replacement materials;
 - d. The cost of maintenance of the afforestation or reforestation project; and
 - e. Other relevant factors.
 8. If, after two growing seasons or one year, whichever is greater, the planting associated with the afforestation or reforestation meet or exceed the standards of the forest conservation manual, the remaining amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.
 9. Bond Release:
 - a. The bond shall be released on receipt of written notice from the department or local authority, if applicable, stating that all afforestation or reforestation requirements have been met.
 - b. The written notice shall be sent at the end of the required two year monitoring and management period, as provided in the maintenance agreement.
 - c. If the department fails to send written notice within sixty (60) days after the end of the monitoring and management period, the bond shall be automatically released.
 10. Financial Security Forfeiture:
 - a. The bond or other financial security may be subject to forfeiture if the obligee fails to comply with:
 - i. Revocation of the forest conservation plan;
 - ii. An administrative order; or
 - iii. An element of the afforestation or reforestation plan.
 - b. The commission or local authority shall notify the obligee, by certified mail, of the intention of the department or local authority to initiate forfeiture proceedings.
 - c. The obligee has thirty (30) days from receipt of the notice of forfeiture to show cause why the bond or other financial security may not be forfeited.
 - d. If the obligee fails to show cause, the bond or other financial security shall be forfeited.
- C. A local program may substitute for the bonding provisions of subsection (B) of this regulation a process that is consistent with the state bonding procedure.
- 16.48.250 Long term protective agreements:
- A. An applicant under the Emmitsburg program shall have in effect at all times approved long term protective measures as provided for in Natural Resources Article, Section 5-1607, Annotated Code of Maryland, to retain as forest all land forested, afforested, or reforested under this chapter. A local program will contain provisions for long term protective measures including subsection (B) of this regulation.
 - B. Approved Forest Management Plan:
 1. Procedure for Approval:
 - a. An application for approval of a forest management plan shall include all information required in the forest conservation manual.
 - b. The forest management plan:
 - i. Shall be legally binding from the date of approval;
 - ii. Shall be prepared by a licensed professional forester;

- iii. — Shall be submitted to the Department of Natural Resources forester assigned to the county where the property is located; and
 - iv. — May be amended periodically, as provided for in subsection (B)(2) of these regulations.
 - e. — The Department of Natural Resources forester shall review the plan to ensure that it is complete and consistent with the State or local program.
 - d. — The department shall notify the applicant whether the forest management plan has been approved.
 - 2. — Procedure for Amendment of an Approved Forest Management Plan.
 - a. — An approved forest management plan may be amended if there is a change in site conditions or landowner objectives.
 - b. — Amendments shall be prepared by a licensed professional forester.
 - e. — The amendment shall be submitted to the Department of Natural Resources forester assigned to the county where the property is located.
 - d. — The Department of Natural Resources forester shall review the amendment to ensure that it is complete and consistent with the state or local program.
 - e. — The Department of Natural Resources shall notify the applicant as to whether the amendment has been approved.
 - f. — The applicant shall sign the amendment.
 - C. — Forest Conservation and Management Agreement. An applicant may satisfy the requirement for long-term protection under Natural Resources Article, Section 5-1607(e), Annotated Code of Maryland, by executing a forest conservation and management agreement, as provided in Tax-Property Article, Section 8-211, Annotated Code of Maryland, and COMAR 08.07.03.
 - D. — Other Legally Binding Protective Agreements.
 - 1. — Other legally binding protective agreements include:
 - a. — Covenants running with the land;
 - b. — Deed restrictions;
 - e. — Conservation easements; and
 - d. — Land trusts.
 - 2. — Other legally binding agreements shall provide:
 - a. — Protection for land forested, afforested, or reforested under Natural Resources Article, Section 5-1601—5-1612, Annotated Code of Maryland, and this chapter; and
 - b. — Limitation on the uses of forest to those that are consistent with forest conservation.
 - E. — An applicant may include in a forest conservation plan another long-term protective measure if the applicant demonstrates to the satisfaction of the department that the measure will provide for the long-term protection of the areas retained, afforested, or reforested under this chapter.
 - F. — Procedure for a Timber Harvesting Plan.
 - 1. — An individual may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan provided that the harvest:
 - a. — Is consistent with the intent of an approved forest management plan, forest conservation management agreement, or other long-term protective agreement;
 - b. — Is subject to a timber harvest plan:
 - i. — Prepared by a licensed professional forester;
 - ii. — Submitted to the local forestry conservancy district board for review and approval;
 - iii. — That remains in effect for two years; and
 - e. — Is consistent with the intent and requirements of the approved forest conservation plan.
 - 2. — The local forest conservancy district board shall notify the individual whether the timber harvest plan under Section 16.48.250 (F)(1) has been approved.
- Article 6. — Additional Requirements
- 16.48.260 — Qualified professionals.
- A. — An individual may prepare a forest stand delineation or a forest conservation plan, if the individual:

1. — Is a licensed forester;
 2. — Is a licensed landscape architect; or
 3. — Meets the requirements of subsection (B) of this regulation.
- B. — An individual may be approved by the department as a qualified professional if the individual:
1. — Possesses a four-year degree in the natural resources sciences, natural resources management, or landscape or environmental planning;
 2. — Has the following:
 - a. — Two years of professional experience in natural resources sciences, natural resources management, landscape planning or environmental planning, or the equivalent, as determined by the state, or
 - b. — A graduate degree in natural resources and one year of professional experience;
 3. — Has the ability to meet the obligations required by the forest conservation manual to prepare a forest stand delineation and a forest conservation plan; and
 4. — Satisfactorily completes a forest conservation course offered by the department.
- C. — The department shall offer forest conservation courses on a regular basis, which shall demonstrate how to:
1. — Develop and interpret a forest stand delineation and forest conservation plan according to criteria stated in the forest conservation manual;
 2. — Prepare and interpret soils, topography, floodplain, wetlands and site maps;
 3. — Prepare afforestation and reforestation plans according to criteria stated in the forest conservation manual;
 4. — Prepare a sketch map of a site, showing areas of forest retention, proposed reforestation, or afforestation;
 5. — Identify and evaluate protection measures that may be appropriate for forested areas that are sensitive to disturbance;
 6. — Identify flora and fauna, including trees, woody shrubs, plants and wildlife;
 7. — Diagnose and treat forest pest and disease problems; and
 8. — Understand ecosystem interactions including:
 - a. — Water regime impacts;
 - b. — Soil variations as they affect existing trees and species selection for afforestation and reforestation;
 - c. — Wildlife habitats;
 - d. — Multi-storied plant canopies, and
 - e. — Forest successional stages.
- 16.48.270 — Training.
- A. — Seminars for Local Officials.
1. — The department shall provide a training program to assist local officials in the development of local programs, including one seminar per year for each geographic region of the state for the calendar years of 1992 and 1993.
 2. — For the purposes of this training program the geographic regions are:
 - a. — Central Region: Baltimore, Carroll, Cecil, Hartford, Kent and Queen Anne's counties and Baltimore City;
 - b. — Eastern Region: Caroline, Dorchester, Somerset, Talbot, Wicomico, and Worcester counties;
 - c. — Southern Region: Anne Arundel, Calvert, Charles, Howard, Montgomery, Prince George's and St. Mary's counties; and
 - d. — Western Region: Allegany, Frederick, Garrett, and Washington counties.
- B. — Additional Seminars.

1. ~~The department may offer additional annual seminars to assist local officials, developers, planners, surveyors, engineers, foresters, biologists and landscape architects in the development, review or approval of forest stand delineations and forest conservation plans.~~
2. ~~The department may sponsor additional seminars in conjunction with other professional and trade organizations.~~

~~16.48.280 Enforcement.~~

~~A. Application.~~

1. ~~The provisions of this chapter apply to a person under the state program making application for a subdivision or project plan, grading or sediment control permit, on areas twenty thousand (20,000) square feet or greater.~~
2. ~~A local authority may adopt the provisions of this chapter for the enforcement of a local program.~~

~~B. Complaints and Orders.~~

1. ~~In addition to sanctions authorized by Natural Resources Article, Section 5-1612, Annotated Code of Maryland, the Department may serve a written complaint on an alleged violator if the department determines that there has been a violation of:~~

- a. ~~A provision of Natural Resources Article, Section 5-1601—5-1611, Annotated Code of Maryland;~~
- b. ~~A regulation of this chapter;~~
- e. ~~A forest stand delineation or forest conservation plan;~~
- d. ~~An administrative order.~~

2. ~~The complaint shall:~~

- a. ~~Identify the violator and the location of the violation;~~
- b. ~~State the provision violated;~~
- e. ~~State the specific facts on which the complaint is based; and~~
- d. ~~Provide an opportunity to request a hearing to contest the complaint.~~

3. ~~Corrective Action.~~

- a. ~~At any time, including during an enforcement action, the department may issue an administrative order requiring the violator to take correction action within a certain time period.~~
- b. ~~The corrective action may include an order to:~~
 - i. ~~Stop the violation;~~
 - ii. ~~Stabilize the site;~~
 - iii. ~~Stop all construction work at the site of a regulated activity;~~
 - iv. ~~Restore or rectify unlawfully cleared areas; or~~
 - v. ~~Submit a written report or plan concerning the violation.~~

4. ~~Service.~~

- a. ~~A complaint, order, or other administrative notice issued by the department shall be served:~~
 - i. ~~On the violator personally;~~
 - ii. ~~On the violator's agent at the activity site; or~~
 - iii. ~~By certified mail to the violator's last known address.~~
- b. ~~An order issued under this regulation is effective immediately, according to its terms, when it is served.~~

~~C. Hearings.~~

1. ~~The department shall give notice and hold a hearing under this chapter in conformance with State Government Article, Section 10-210—10-217, Annotated Code of Maryland.~~
2. ~~Within ten calendar days of receiving a complaint, order, or notice under this chapter, the violator may request a hearing, in writing.~~
3. ~~If a person has been served with an order for corrective action, the person may request a stay conjunction with a request for a hearing.~~

4. ~~A request for stay may be heard before or during a hearing on the complaint. At the request of a violator, a request for stay may be heard within ten business days of the department's receipt of the request.~~
 5. ~~Administrative Action for a Forest Conservation Plan or Bond. The department may suspend or revoke a forest conservation plan or forfeit a bond on a forest conservation plan on failure of the violator to comply with the requirements of an administrative order.~~
 6. ~~Statutory Remedies. The provisions of this chapter may not be construed to limit or affect the authority of the department to proceed against violators under Natural Resources Article, Section 5-1612, Annotated Code of Maryland.~~
- D. ~~Plan Suspension and Revocation. The department may suspend or revoke a plan after notice to the violator and opportunity for a hearing has been provided if the department determines that one or more of the following has occurred:~~
1. ~~Failure of a violator to post a bond required under COMAR 0819.0B5.01B;~~
 2. ~~Failure to comply with the requirements of an administrative action or order issued under this chapter, or for a violation of Natural Resources Article, Section 5-1601—5-1612, Annotated Code of Maryland;~~
 3. ~~Misrepresentation in the application process or failure to disclose a relevant or material fact;~~
 4. ~~Violation of a forest conservation plan requirement;~~
 5. ~~Substantial deviation from the conditions, specifications, or requirements of a plan;~~
 6. ~~Changes in site conditions, new information, or amended regulatory requirements necessitate revocation before a person's right under a plan have vested.~~
- E. ~~Notice. Except as provided under subsection (G) of this section, the department may not suspend or revoke a forest conservation plan unless the department first gives the violator written notice by certified mail of the specific facts that warrant suspension or revocation, and an opportunity to be heard.~~
- F. ~~Contested Case Hearings:~~
1. ~~On receipt of written notice to suspend or revoke a forest conservation plan, the violator has ten calendar days to request a contested case hearing.~~
 2. ~~A hearing under this regulation shall be conducted in conformance with State Government Article, Section 10-201—10-217, Annotated Code of Maryland.~~
 3. ~~If the department does not receive a request for a hearing, the forest conservation plan shall be suspended or revoked.~~
- G. ~~Emergency Action:~~
1. ~~The department may order the immediate suspension of a forest conservation plan if the department finds that the public health, safety or welfare imperatively requires the emergency suspension.~~
 2. ~~The department shall promptly give the violator written notice that the emergency action has been taken.~~
 3. ~~A notice of emergency action shall include a statement of:~~
 - a. ~~Specific facts on which the emergency suspension is based; and~~
 - b. ~~The violator's opportunity to be heard.~~
- Article 7. ~~Applicability~~
- 16.48.290 ~~Areas which this chapter does not apply:~~
- A. ~~Any preliminary plan of subdivision or any grading or sediment control plan approved before July 1, 1991; and~~
 - B. ~~Any planned unit development that by December 31, 1991, has:~~
 1. ~~Met all local requirements for planned unit development approval; and~~
 2. ~~Obtained initial development plan approval by the Department]~~

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Ordinance shall take effect on the date on which the Mayor approves the Ordinance after passing by the Board of Commissioners or on the date on which the Board of Commissioners passes the Ordinance over the veto of the Mayor.

PASSED this 6th day of January, 2020

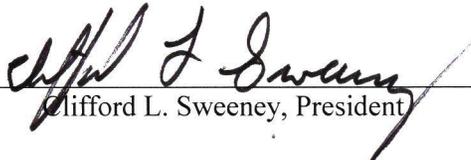
by a vote of 5 for, 0 against, 0 absent, and 0 abstain.

ATTEST:

EMMITSBURG BOARD OF COMMISSIONERS:



Madeline Shaw, Town Clerk



Clifford L. Sweeney, President

MAYOR

APPROVED VETOED

this 6th day of January, 2020.



Donald N. Briggs, Mayor

I hereby certify that the foregoing Ordinance has been posted as required by Chapter 2.04 of the Emmitsburg Municipal Code.


Madeline Shaw, Town Clerk
Date: 01/07/2020