

## Article 21. Natural Resources

### 21-1 NATURAL RESOURCE PROTECTION AREAS

### 21-2 DEVELOPMENT ON LOTS OR PARCELS WITHOUT APPROVED STORMWATER MANAGEMENT PLANS

### 21-3 ENFORCEMENT AND MITIGATION

#### 21-1 NATURAL RESOURCE PROTECTION AREAS

##### A. Purpose

The purpose of the Natural Resource Protection Area (NRPA) is to serve as a buffer that will minimize disturbance to sensitive environmental features from future development. The intent of the NRPA is to protect water quality and quantity in streams, water courses, and wetlands; protect steep slopes and minimize erosion and siltation; protect native and non-invasive vegetation; and to protect persons and property from environmental hazards such as erosion, siltation, and floodwaters.

##### B. Scope

1. The regulations in this Section shall apply to all proposed development, including projects for which subdivision, site plan, building permits, grading permits or approvals are necessary.
2. The regulations of this Section do not apply within the Critical Area District (For Critical Area regulations see Article 22 of this Ordinance).

##### C. Application of the NRPA-1 and NRPA-2

Environmental features on all properties shall be protected by either the NRPA-1 or NRPA-2 which shall be applied in accordance with this Section.

##### 1. Outside of Town Centers

- a. The NRPA-1 shall apply to environmental features on parcels, lots, outlots, residue, and open space created following the adoption of this Ordinance.
- b. The NRPA-2 shall apply to environmental features on parcels, lots, outlots, residue, and open space created prior to the adoption of this Ordinance. However, the NRPA-2 may be applied on lots created following the adoption of this Ordinance if the lot was created through the combination of smaller lots or parcels which existed prior to the adoption of this Ordinance.

##### 2. Town Centers

The NRPA-2 shall apply to environmental features on all parcels, lots, outlots, residue, and open space.

##### 3. Environmental Features Included in NRPA-1

The NRPA-1 shall apply to the following environmental features and buffer areas:

##### a. Streams

All perennial and intermittent streams as well as a buffer from all perennial and intermittent streams. The buffer shall be a minimum of 100 feet from both sides of the stream. The buffer shall be measured from the edge of the streambank. In the case of contiguous steep slopes of 25% or greater, the buffer shall be expanded to the top of the slope plus 20 feet. In the case of highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%), the buffer shall be expanded to the landward edge of the highly erodible soil or 150 feet, whichever is less. The expansion of the buffer shall be drawn perpendicular to the stream. If the area of the 100-year floodplain is greater than the buffer or expanded buffer as described in this section, then this area shall be included within the NRPA-1.

##### b. Wetlands

All wetlands and a buffer a minimum of 100 feet adjacent to wetlands. The buffer shall be measured from the edge of the wetland. In the case of contiguous steep slopes of 25% or greater, the buffer shall be expanded to the top of the slope plus 20 feet. In the case of highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%), the buffer shall be expanded to the landward edge of the highly erodible soil or 150 feet, whichever is less. The expansion of the buffer shall be drawn perpendicular to the wetland.

**c. Steep Slopes**

Any land area exceeding 5,000 square feet with a slope in excess of 25% and a buffer of 20 feet from the edge of the steep slope.

**4. Environmental Features Included in NRPA-2**

The NRPA-2 shall apply to the following environmental features and buffer areas:

**a. Streams**

All perennial and intermittent streams as well as a buffer for all perennial and intermittent streams. The buffer shall be a minimum of 50 feet from both sides of the stream. The buffer shall be measured from the edge of the streambank. In the case of contiguous slopes of 25% or greater, the buffer shall be expanded to the top of the slope, or to 100 feet, whichever is less. The expansion of the buffer shall be drawn perpendicular to the stream.

**b. Highly Erodible Soils Adjoining Streams**

Except within Town Centers and the Employment Center District, if the lot or parcel was created between 05/01/2006 and the adoption of this Ordinance, the buffer described in item a above shall be expanded for contiguous highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%) to the landward edge of the highly erodible soils, or to 100 feet, whichever is less.

**c. Wetlands**

All wetlands and a buffer of at least 50 feet in areas adjacent to wetlands. For wetlands adjacent to steep slopes, highly erodible soils, or wetlands of special state concern, the buffer shall be expanded as per COMAR § 26.23.01.04 or as required by the Maryland Department of the Environment.

**5. Setback from the NRPA**

A minimum setback of ten feet from the edge of the NRPA-1 and NRPA-2 shall be maintained. Variances for the setback to the NRPA-1 shall not be permitted.

**6. Location of the NRPA**

**a.** No portion of the NRPA-1, or the required setback from the NRPA-1, shall be allowed within lots one acre or less in size. On lots greater than one acre in size, sufficient contiguous land for the construction of a building or dwelling with amenities on the lot shall be demonstrated. Minimum sufficient contiguous suitable land area shall be exclusive of Natural Resource Protection Areas, Forest Retention Areas, septic recovery areas, and required setbacks. Minimum sufficient suitable land area shall be 20,000 square feet for lots having individual septic systems and 10,000 square feet for lots or parcels served by a public sewer or a community septic system. All lots below this minimum shall be considered having marginal amounts of suitable land for building purposes and may be required to provide detailed plot plans to prove suitability.

**b.** The NRPA-2 may be located on applicable lots or parcels of any size.

**D. Wetland Requirements**

**1. Purpose**

Regulations governing development in and adjacent to wetlands are intended to protect wetlands from the negative effects of siltation and nutrification caused by development. It is the purpose of the County to achieve no significant loss of wetlands.

**2. Boundaries**

Boundaries are as delineated and verified by qualified professionals as meeting the definition of jurisdictional wetlands according to State and/or Federal regulation.

**3. Delineation**

Wetlands shall be delineated on all site plans, subdivision plats, and grading and building permit applications by qualified professionals. Delineation as per the applicable "Federal Manual for the Identifying and Delineating of Jurisdictional Wetlands" as amended from time to time may be required. The delineation shall be made using the best available and most current information from state and federal sources. The delineation shall be made within five years of any site plan, subdivision plat, grading and building permit application. A wetland report compiled by a qualified expert shall be submitted to confirm the delineation. The Zoning Officer or its designee shall

determine if the wetland report and delineation are acceptable and may also require a Jurisdictional Determination by the U.S. Army Corps of Engineers to verify wetland location.

#### **4. Corrections to Delineations**

If it is determined prior to final site plan or subdivision approval that more wetlands exist on the site than originally delineated on the preliminary site plan or plat, preliminary approval of the original submittal granted by the Planning Commission shall lapse. The applicant shall submit subsequent revisions of the plan for staff review and reconsideration by the Planning Commission prior to reapproval.

#### **5. Changes Per Federal and/or State Wetland Permitting Process**

If a site plan or subdivision has received preliminary approval and the site plan or subdivision is changed as a result of the Federal and/or State wetland permitting process, the preliminary approval previously granted shall lapse. The applicant shall submit subsequent revisions of the plan for staff review and reconsideration by the Planning Commission prior to reapproval.

#### **6. Filling**

The filling of wetlands is only permitted for road and driveway crossings in accordance with Section 21-1.G.4 after it is established that all options have been exhausted and there are no alternatives. The developer shall be required to include written justification. Planning Commission approval shall be required.

### **E. Plans and Plat Information**

1. Plans or plats submitted for review or prepared for recording shall clearly show:

- a. The extent of the NRPA and labeled as such
- b. A label stating "Natural Resource Protection Area" for the area within the NRPA
- c. A note stating: "There shall be no clearing, grading, construction or disturbance of vegetation in the NRPA in perpetuity except as permitted by the Calvert County Zoning Ordinance"
- d. All perennial and intermitted streams
- e. All non-tidal wetlands
- f. All steep slopes and highly erodible soils
- g. Any additional information as required by the department of Planning & Zoning

2. For all permitted development within the NRPA, all site plans, subdivision plats, building and grading permits shall have a disclaimer placed on them that reads: "The issuance of County permits or approvals is a local process and does not imply that the applicant has met State and Federal requirements under COMAR; the Federal Water Pollution Control Act; or the Rivers and Harbors Act." The disclaimer shall be signed by the applicant.

### **F. Permitted Uses**

The following land uses shall be permitted, provided that the conditions described herein are met and all applicable state and federal approvals have been obtained:

#### **1. Agriculture**

Agriculture shall be permitted, provided an approved and enforced Soil Conservation Plan and accepted soil conservation practices of the soil conservation district are approved and implemented along watercourses. A minimum 25 foot wide buffer with woody vegetation along the edge of farmland bordering streams and wetlands is required to reduce surface runoff and associated pollutants from entering waterways.

#### **2. Forestry**

Forestry operations shall be required to meet the conservation requirements of Section 21-1.H below and shall be in compliance with an approved Timber Harvest Plan.

### **G. Permitted Activities and Development**

The NRPA shall not be disturbed other than by those permitted uses described in Section 21-1.F above, with the following exceptions provided that all applicable state and federal approvals have been obtained. Mitigation as

described in Section 21-3.B and C is required for removal of vegetation for permitted activities and development as described in this section, but on a 1:1 basis.

1. Basic maintenance, including native plantings. Trees that are a threat to structures and invasive species may be removed, with the approval of a vegetation removal permit.
2. Passive recreation and foot and walking trails. Alteration of the natural environment and removal of surface vegetation in these areas shall be prohibited with the exception of selective clearing to accommodate passive recreation and walking trails which are constructed with environmentally friendly materials, with the approval of a vegetation removal permit.
3. Utility transmission facilities may be permitted after it is established that there are no alternatives, as determined by Department of Planning & Zoning. The developer shall be required to provide a written justification. If the affected area is designated a "conservation area" on a record plat or requires the grading of steep slopes or highly erodible soils, then the disturbance and construction shall require approval of the Planning Commission.
4. Road and driveway crossings may be permitted after it is established, and the Department of Planning & Zoning agrees, that all options have been exhausted and there are no alternatives, or when stream or wetland crossings are necessary to comply with town center master plans. The developer shall be required to provide a written justification. The number of road and driveway crossings shall be minimized. If a road or driveway crossing is necessary, it shall cross a stream at a 90-degree angle whenever possible. If the affected area is designated a "conservation area" on a record plat or requires the grading of steep slopes or highly erodible soils, then the disturbance and construction shall require approval of the Planning Commission. If the Planning Commission approves, slopes may be graded out to less than 25% for construction of roads to provide access to lots.
5. Non-permanent disturbance of the NRPA for emergency fixes of existing stormwater management devices is permitted with all required State and/or Federal approvals. Clarification from the State may be required.

#### **H. Conservation Requirements**

The following conservation measures are required within the NRPA:

1. All permitted uses, activities, and development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation.
2. Clearing or removal of natural ground cover and vegetation in preparation for development of permitted uses and permitted activities and development shall be minimized.
3. Disturbance of sensitive environmental areas, including significant or special natural features and significant wildlife habitats shall comply with the recommendations of the Department of Planning & Zoning and the Maryland Department of Natural Resources as applicable.

#### **I. Fences**

Fences shall not be permitted within the NRPA. Temporary fencing required to delineate areas not to be disturbed for a permitted development activity are allowed but shall be removed by the developer following completion of construction and post site stabilization.

#### **J. Variances**

1. Variances shall not be permitted in the NRPA-1.
2. Variances are permitted in the NRPA-2 from the Board of Appeals.
3. At environmental planning staff recommendation, the Zoning Officer or its designee is authorized to grant administrative variances for disturbance to steep slopes for the purposes of slope stabilization in the NRPA-2. The applicant must demonstrate that erosive conditions exist, and the proposed stabilization method minimizes land disturbance and clearing of existing vegetation. Slope stabilization activities include the prevention of soil movement by any of the various vegetative and/or structural means. Stabilization can include minimal grading; retaining walls; erosion control mats, blankets and fiber logs; or, other environmentally sensitive practices. It shall not include the use of accessory structures including but not limited to patios, terraces or gazebos.

4. If a variance is granted, mitigation as described in Sections 21-3.B and C is required by planting on the site, but at a rate of 1:1 per square foot of the disturbance.

#### **21-2 DEVELOPMENT ON LOTS OR PARCELS WITHOUT APPROVED STORMWATER MANAGEMENT PLANS**

The provisions of this section apply to lots or parcels in communities without approved stormwater management plans.

- A. To reduce the effects of stormwater runoff and erosion, clearing of vegetation on all lots or parcels less than 20,000 square feet in size shall be limited to no more than 6,000 square feet. The Zoning Officer, with recommendation by the Environmental Planner, may waive this requirement for properties outside the Critical Area if it is shown that the clearing limitation would pose undue hardship. Waivers to clearing limitations include clearing fees for the area cleared beyond 6,000 square feet in an amount approved by the Board of County Commissioners. If a waiver is granted, the limit-of-disturbance shall be staked and flagged prior to issuance of the grading and/or building permits. The stakes and flags shall remain in place throughout development of the property until a Use and Occupancy Permit is issued.
- B. Lot coverage shall be limited to no more than 15 percent of the lot or parcel if the lot or parcel is one-half acre or greater in size. If the lot or parcel is less than one-half acre, lot coverage shall be limited to no more than 25 percent of the lot or parcel or 5,445 square feet, whichever is greater.

#### **21-3 ENFORCEMENT AND MITIGATION**

A violation of any provision of this Ordinance or a failure to comply with any requirement of this Ordinance by any person, corporation, association, partnership, or the agent of any such person, may be processed as a zoning violation under this Ordinance (see Article 33 for additional enforcement regulations).

- A. In addition to the fines and penalties provided for in this Ordinance, any person in violation of this Article shall pay a fine in accordance with Article 33 of this Ordinance for each violation and is required to replant trees to replace those that have been removed as prescribed in item B below for the area impacted, filled, cleared, graded, or cut in violation of this Article.
- B. Replanting to correct a violation is calculated at the rate of four square feet to one square foot (4:1) of the area cleared, graded, cut, impacted or filled in violation of the provisions of this Article. A mitigation plan shall be approved by the Department of Planning & Zoning and include canopy trees at a rate equal to one large tree per 400 square feet, and in the same square feet either two understory trees or three shrubs selected from the document entitled, "Calvert County Native Plant List", adopted by the Board of County Commissioners and available from the Department of Planning & Zoning. In cases where there is less area than needed to replant at 4:1, the remainder shall be mitigated with the payment of fees-in-lieu as set by the Board of County Commissioners.
- C. A person required to conduct replanting as part of a mitigation plan shall post a bond or other financial security to insure compliance with the mitigation plan.

##### **1. Requirements**

- a. A financial security shall be furnished in the form of a surety bond, an irrevocable letter of credit, cash bond, certificate of guarantee, or other surety as authorized from time to time by the Board of County Commissioners and approved by the Office of the County Attorney. The surety shall:
  - i. Name the Board of County Commissioners as obligee.
  - ii. Assure that the mitigation replanting is conducted in accordance with the approved mitigation plan.
  - iii. Be in an amount equal to 1.0 times the cost as approved by the Department of Planning & Zoning of performing the mitigation plus an administrative fee as set by the Board of County Commissioners to cover the costs of inspections and handling of the bond. This fee will be submitted with the bond and will not be reimbursed.
  - iv. Remain in force until all requirements of the mitigation plan have been fulfilled to the satisfaction of the Department of Planning & Zoning.

b. The surety may not be cancelled by the issuing entity unless both of the following requirements are fulfilled:

i. The issuer notifies the Board of County Commissioners and the principal of its intention to cancel the surety, in writing, by registered mail, not less than 90 days before cancellation.

ii. At least 45 days before the cancellation date indicated in the notice, the principal files a commitment from another entity to provide a substitute surety that will be effective on the cancellation date indicated in the notice.

## 2. Forfeiture of Surety

a. The surety is subject to forfeiture if the principal fails to comply with the mitigation plan.

b. Before forfeiture of the surety, the Board of County Commissioners shall notify the principal and the issuer, by certified mail, of the failure of the principal to comply with the mitigation plan and give the principal 30 days to come into compliance.

c. If a person fails to come into compliance within the 30 day period, the surety is forfeited and the County or its agents are allowed access to the property to accomplish the previously bonded planting.

## 3. Release of Surety

a. If, after two growing seasons, the survival of plantings associated with the mitigation plan meets or exceeds the standards of the mitigation plan, the amount of the surety will be released.

b. If, after two growing seasons, the survival of the plantings associated with the mitigation plan is less than the standards of the mitigation plan, the surety will be reduced by a percentage equal to the percentage of plantings that have survived, and that portion of the surety will be released. An additional administrative fee as set by the Board of County Commissioners will be submitted prior to partial release of the surety to cover the costs of additional inspections and handling of the remaining bond. This fee will not be reimbursed.