

**ORDINANCE NO. 2017 - 05**

**FOREST CONSERVATION**

“The following ordinance replacing Article VIII: Forest Conservation of the Land Development Ordinance of The Town of New Market, Maryland is adopted by the Mayor and Town Council of The Town of New Market, Frederick County, Maryland, to meet the requirements of Natural Resources Article, Sections 5-1601—5-1612, Annotated Code of Maryland. This ordinance is for the purpose of prohibiting certain development projects from cutting or clearing certain forests within The Town of New Market unless a forest stand delineation and a forest conservation plan are in effect.”

Adopted this 11<sup>th</sup> day of Jan, 2017.

Mayor and Town Council

New Market, Maryland

Mayor Winslow F. Burhans, III

Lawrence “Jake” Romanell, Councilman

Michael Davies, Councilman

Dennis Kimble, Councilman

Scott Robertson, Councilman

Shannon “Shane” Rossman, Councilman

ATTEST:

Karen Durbin

Karen Durbin, Clerk

## **ARTICLE VIII: FOREST CONSERVATION ORDINANCE**

### **1.0 PURPOSE**

**1.1** The New Market Town Council has determined that to meet the requirements of Natural Resources Article, Sections 5-1601--5-1612, Annotated Code of Maryland, the provisions of this Ordinance article must be enacted.

**1.2** This article shall be known and cited as the "Forest Conservation Ordinance of The Town of New Market, Maryland." The acronym "FCO" may be used to refer to the Forest Conservation Ordinance.

**1.3** The State Forest Conservation Manual, Third Edition, 1997, as it may be amended, shall serve as the Town of New Market's (Town) Forest Conservation Technical Manual, hereafter referred to as "Technical Manual."

**1.4** The Technical Manual shall be used to establish specifications and standards of performance required in preparing and implementing forest stand delineations and forest conservation plans required by this FCO. In the case of disagreement between the Technical Manual and the FCO, the terms of the FCO shall govern. The requirements of the FCO are supplementary to other laws and regulations in the Town.

**1.5** Furthermore, the Town Council finds that the preservation, protection, and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; provides shade and shelter for the populous, thus mitigating heat islands; protects and increases property values; conserves and enhances the Town's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare of the Town's citizens. This FCO is enacted in order to both preserve the agricultural heritage of the community and to protect and conserve the existing forest resource against further degradation.

### **2.0 FOREST AND TREE CONSERVATION DEFINITIONS**

See Article XIII, Section 13.3, of the Town's Land Development Ordinance (LDO).

### **3.0 APPLICATION**

#### **3.1 Except as provided in Section 3.2 of this article, this FCO applies to:**

**3.1.1** Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this FCO for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 40,000 square feet or greater.

**3.1.2** Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this FCO for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land more than 5 years after the area has been cleared for an agricultural activity, subject to a declaration of intent, in accordance with an exemption under Section 3.2.3, which application has not been denied.

3.1.3 Any public utility not exempt under Sections 3.2.4 and 3.2.5 of the FCO.

3.1.4 Applicants under this FCO are hereby given notice that all projects that ultimately require approval of subdivision, stormwater management plan, sediment control, or grading permits must comply with the Town's Forest Conservation requirements.

### **3.2 This FCO does not apply to:**

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

3.2.2 Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under Tax-Property Article, Section 8-211, Annotated Code of Maryland, that:

- a. Were completed before July 1, 1991; or
- b. Were completed on or after July 1, 1991 and the property on which the cutting is conducted is not be the subject of an application for a subdivision, site plan, or grading or sediment and erosion control permit for development within 5 years after the logging or harvesting operation; and
- c. Are subject to a declaration of intent as provided for in Section 3.3 of this FCO by the landowner and approved by the Town.

3.2.3 Any agricultural activity that does not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, as long as a declaration of intent has been filed with the Town, which includes:

- a. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
- b. A statement that no development will take place for 5 years after an agricultural activity has cleared forest; and
- c. A sketch map of the property which shows the area to be cleared.

3.2.4 The cutting or clearing of public utility rights-of-way licensed under Article 78, Sections 54A and 54B or Section 54-I, Public Utility Companies, Sections 7-207 and 7-208 or 7-205, Annotated Code of Maryland or land for electric generating stations licensed under Article 78 Sections 54A and 54B or Section 54-I, Public Utility Companies Sections 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 5-1603(f), Annotated Code of Maryland; and
- b. Cutting or clearing of the forest is conducted so as to minimize the loss of forest, under the supervision of the Town Forestry Consultant (TFC).

3.2.5 Any routine maintenance or emergency repairs of existing public utility rights-of-way initially constructed under the guidelines of this FCO.

3.2.6 Any residential construction activity conducted on a single existing lot of any size provided that the activity on the lot:

- a. Will not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of any forest;
- b. Will not result in the cumulative cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this FCO; and
- c. Is subject to a declaration of intent stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest.

3.2.7 An activity required for the purpose of constructing a dwelling house intended for the use of the owner or the child of the owner, if the activity:

- a. includes the creation of no more than 1 lot new lot
- b. Does not result in the cumulative cutting, clearing or grading of more than 20,000 square feet of forest; and
- c. Is the subject of a declaration of intent filed with the Town as provided for in Section

- 3.3 of this FCO, which states that transfer of ownership may result in a loss of exemption.
- 3.2.8 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 the grantee file a declaration of intent, as provided for in Section 3.3 of this FCO.
- 3.2.9 A final subdivision plat, project plan, grading plan, stormwater management or sediment control plan approved before July 1, 1991.
- 3.2.10 A planned unit development (PUD) that by December 31, 1991, has:
- a. Met all requirements for PUD approval, and
  - b. Obtained final plat approval by the Town.
- 3.2.11 A stream restoration project, as defined in Article XIII, Section 13.3 of the Town's LDO, for which the applicant for a grading or sediment control permit has executed a binding maintenance agreement of at least 5 years with the affected property owner or owners.
- 3.2.12 Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, so long as 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.
- 3.2.13 An activity on a previously developed area covered by impervious surface and located in the Priority Funding Area (PFA) at the time of the application for subdivision plan, grading, or sediment control permit approval.

### **3.3 Declaration of Intent.**

- 3.3.1 The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, Section 5-103 and Sections 5-1601--5-1612, Annotated Code of Maryland, and this FCO.
- 3.3.2 A person seeking an exemption under Sections 3.2.2, 3.2.3, 3.2.6, 3.2.7 and 3.2.8 of this FCO shall file a declaration of intent with the Town.
- 3.3.3 The declaration of intent is effective for 5 years.
- 3.3.4 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:
- a. Does not conflict with the purpose of any existing declaration of intent, and
  - b. Complies with the applicable requirements for an exempted activity.
- 3.3.5 If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:
- a. There shall be an immediate loss of exemption, or
  - b. There may be a noncompliance action taken by the Town, as appropriate, under, this FCO.
- 3.3.6 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 FCO are satisfied.
- 3.3.7 The Town may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
- a. Meet the retention, afforestation and reforestation requirements established in Sections 3.0 – 7.0 of this FCO;
  - b. Pay a noncompliance fee of up to \$1.20 per square foot of forest cut or cleared under the declaration of intent;
  - c. Be subject to other enforcement actions appropriate under Natural Resources Article, Sections 5-1601--5-1612, Annotated Code of Maryland, and this FCO; or
  - d. File a declaration of intent with the Town.
- 3.3.8 In its determination of appropriate enforcement action, the Town may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this

FCO.

3.3.9 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.

3.3.10 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 Sections 3.2.2 and 3.2.3 of this FCO.

#### **4.0 GENERAL REQUIREMENTS**

**4.1** Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this FCO for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 40,000 square feet or greater shall, for the lot or tract on which the development is located:

4.1.1 Submit to the Town Zoning Administrator (ZA), no less than 20 days prior to a regularly scheduled meeting of the Town's Planning and Zoning Commission (PZC):

- a. A Forest Stand Delineation; and
- b. A Forest Conservation Plan.

4.1.2 Not perform any construction activity in the drip line of a tree that is to be retained; unless identified on the Forest Conservation Plan and approved by the Town PZC.

4.1.3 Use methods approved by the Town PZC, as provided in the Technical Manual, to protect retained forests and trees during construction.

**4.2** If the Town or person using state funds makes application to conduct a regulated activity, the provisions of COMAR 08.19.04.01D apply.

**4.3** A substantively complete application for final plat approval shall include those requirements as provided for in the Town of New Market Subdivision Regulations.

**4.4** Applicants for stormwater management approval, sediment control plan approval, or grading permit must fulfill the requirements established for same by the Frederick County Department of Public Works until such time as the Town and/or its agent assumes responsibility.

#### **5.0 FOREST STAND DELINEATION**

##### **5.1 Criteria.**

5.1.1 A Forest Stand Delineation shall be submitted at the initial stages of subdivision or project plan approval or stormwater management approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.

5.1.2 The Forest Stand Delineation shall be prepared by a registered licensed forester, licensed landscape architect, or a Maryland Department of Natural Resources (DNR) Qualified Professional who meets the requirements stated in COMAR 08.19.06.01A.

- a. The Forest Stand Delineation is subject to review by the TFC.

5.1.3 The Forest Stand Delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall include the following components:

- a. A topographic map identifying intermittent and perennial streams and respective 50-foot buffers, steep slopes over 25%, 100-year floodplains, and wetlands; and

- b. A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more; and
  - c. Forest stand maps characterizing species, location, and size of trees showing dominant and co-dominant forest types; and
  - d. Information required by the Technical Manual; and
  - e. Any other information Town determines is necessary to implement this FCO.
- 5.1.4 If approved by the Town, a simplified forest stand delineation, a concept plan or plat, preliminary plat or plan, sediment control plan, or other appropriate document, verified by a site visit, if appropriate, substitute for a full or intermediate delineation if:
  - a. When no forest cover is disturbed during a construction activity; and
  - b. Designated to be under a long term protective agreement.
- 5.1.5 The Town shall consider a simplified forest stand delineation, or other substitute plan described in Section 5.1.4, complete if it includes:
  - a. All requirements under Section 5.1.3 of this FCO;
  - b. A map showing existing forest cover as verified by field inspection by the TFC; and
  - c. Other information required by this FCO.
- 5.1.6 Time for Submittal
  - a. Within 30 calendar days after submittal of the forest stand delineation, the Town shall notify the applicant whether the forest stand delineation is complete and correct. At this time, the Town will notify the applicant what additional information is needed for a complete application.
  - b. If the Town fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
  - c. The Town may require further information and/or extend the deadline under extenuating circumstances.
- 5.1.7 An approved forest stand delineation may remain in effect for a period not longer than 5 years.

## **6.0 FOREST CONSERVATION PLAN**

### **6.1 General Provisions.**

- 6.1.1 In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.
- 6.1.2 If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Town:
  - a. How techniques for forest retention have been exhausted;
  - b. Why the priority areas specified in Natural Resources Article, Sec. 5-1607(c), Annotated Code of Maryland, cannot be left in an undisturbed condition;
    - i. If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article, Section 5-1607, Annotated Code of Maryland;
    - ii. Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article, Section 5-1607, Annotated Code of Maryland; and
  - c. How the disturbance to the priority forests and priority areas specified in Natural Resources Article, Section 5-1607(c)(2), Annotated Code of Maryland, meets the conditions of Section 14.0 of this Article.
- 6.1.3 The applicant shall demonstrate to the satisfaction of the Town that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished in accordance with Section 14 of this FCO if the applicant proposes to make a payment into the local forest conservation fund instead of conducting afforestation or reforestation.

6.1.4 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:

- a. Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted toward forest conservation requirements under this subtitle.
- b. For the purpose of calculating reforestation mitigation under this FCO, 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.
- c. Nontidal wetlands shall be considered to be priority areas for retention and replacement.
- d. 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.

## **6.2 Preliminary Forest Conservation Plan.**

6.2.1 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.

6.2.2. A preliminary forest conservation plan shall:

- a. Be submitted with the preliminary plan of subdivision or proposed project plan;
- b. Include the approved forest stand delineation for the site;
- c. Include a table that lists the proposed values of the following, in square feet:
  - i. Net tract area,
  - ii. Area of forest conservation required, and
  - iii. Area of forest conservation that the applicant proposes to provide, including both onsite and offsite areas;
- d. 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;
- e. Include an explanation of how the provisions of Section 6.1 of this FCO have been met;
- f. In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;
- g. Include a proposed construction timetable showing the sequence of forest conservation procedures;
- h. Show the proposed limits of disturbance;
- i. Show proposed stockpile areas;
- j. Incorporate a proposed 2-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment; and
- k. Other information the Town determines is necessary to implement this FCO.

6.2.3. The review of the preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.

6.2.4. During the different stages of the review process, the preliminary forest conservation plan may be modified provided the Town approves of the changes.

## **6.3 The Final Forest Conservation Plan.**

6.3.1 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 08.19.06.01A.

6.3.2 A final forest conservation plan shall:

- a. Be submitted to the Town with the following:
  - i. A final subdivision plan,
  - ii. A final project plan,
  - iii. An application for a grading permit, or
  - iv. An application for a sediment control permit;
- b. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
- c. 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;
- d. Incorporate a binding 2-year maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
  - i. Watering, and
  - ii. A reinforcement planting provision if survival rates fall below required standards, as provided in the Technical Manual;
- e. Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
  - i. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention, and
  - ii. Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest
    - a. An owner may place land that is forested, afforested, or reforested under this FCO in a forest conservation and management program under Section 8–211 et seq. of the Tax – Property Article or in a forest management plan prepared by a licensed forester and approved by the Town. Reforestation shall be required when the final regeneration harvest is complete or if determined to be necessary due to the lack of adequate natural regeneration.
- f. Include the substantive elements required under Sections 6.2B(2)–(5), (7)–(9), and (11) of this FCO, as finalized elements of the forest conservation plan; and
- g. Other information the Town determines is necessary to implement this FCO.

#### 6.3.3 Time for Submittal.

- a. Within 45 calendar days after introduction of the Forest Conservation Plan, the Town Engineer (TE) or TFC shall notify the applicant whether the Forest Conservation Plan is complete and approved. Within the allotted timeframe, the (TE/TFC) will notify the applicant what additional information is needed for a complete application.
- b. If the TE/TFC fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
- c. The TE/TFCR may require further information or extend the deadline under extenuating circumstances.

#### 6.3.4 The Town's review of a Final Forest Conservation Plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.

- a. In cases of staged development, each subdivision or project plan, grading permit application, or sediment control application must be accompanied by an approved Forest Conservation Plan already submitted for the project.

#### 6.3.5 The Town may revoke an approved Forest Conservation Plan if it finds that:

- a. Any provision of the plan has been violated;
- b. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
- c. Changes in the development or in the condition of the site necessitate preparation

of a new or amended plan.

6.3.6 The Town may issue a stop work order against any person who violates a provision of this FCO or any regulation, order, approved Forest Conservation Plan, or management agreement.

6.3.7 Before revoking approval of a Forest Conservation Plan, the Town shall notify the violator in writing and provide an opportunity for a hearing.

6.3.8 If a Forest Conservation Plan is required by this FCO, a person may not cut, clear, or grade on the development site until the Town has approved the plan or the person will be in violation.

6.3.9 The Final Forest Conservation Plan cannot be altered without approval from the Town PZC.

## **7.0 AFFORESTATION AND RETENTION**

**7.1 Afforestation Requirement.** A person making application after the effective date of this FCO for subdivision or stormwater management plan approval, a grading permit, or a sediment control permit for an area of land of 40,000 square feet or greater, shall:

7.1.1 Conduct afforestation on the lot or tract in accordance with the following:

a. A tract having less than 25 percent of its area in forest cover shall be afforested up to at least 25 percent of the net tract area for the following land use categories:

- i. Open space
- ii. R1 & R2 Residential
- iii. Planned development district (when no commercial uses are included)

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

- i. Agricultural
- ii. Institutional

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

- i. Residential merchant
- ii. Mixed residential service
- iii. Mixed commercial
- iv. Mixed commercial industrial
- v. Economic development flex
- vi. Amusement park
- vii. Planned development district (with commercial uses)
- viii. Town residential commercial/mixed use district
- viii. Town business park

7.1.2 Comply with the following when cutting into forest cover that is currently below the afforestation percentage described in Section 7.1.1(a) and (b) of this FCO:

a. The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and

b. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a ratio of 2 acres planted for each acre removed below the threshold 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.

## **7.2 Retention.**

7.2.1 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 Town, that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:

a. Trees, shrubs, and plants located in sensitive areas including the annual and 100-year floodplains, streams and their buffers, steep slopes, wetlands, and critical habitats;

- b. Contiguous forest that connects the largest undeveloped or heavily vegetated tracts of land within and adjacent to the site;
- 7.2.2 The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Town, that the applicant qualifies for a variance in accordance with Section 14.1 of this FCO:
- a. Trees, shrubs, or plants identified on the list of rare, threatened, or endangered species under:
    - i. The federal Endangered Species Act of 1973 in 16 U.S.C. Sections 1531—1544 and in 50 CFR 17,
    - ii. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, Sections 10-2A-01—10-2A-09, Annotated Code of Maryland, and
    - iii. COMAR 08.03.08.
  - b. Trees that:
    - i. Are part of an historic site;
    - ii. Are associated with a historic structure; or
    - iii. Have been designated by the state or the Town as a national, state, county or municipal champion tree; and
  - c. Any tree having a diameter measured at 4.5 feet above the ground of:
    - i. 30 inches or more; or
    - ii. 75% of the diameter, measured at 4.5 feet above the ground, of the current state, county, or municipal champion tree of that species as designated by the State of Maryland Department of Natural Resources, or the Town.

## 8.0 REFORESTATION

### 8.1 Forest Conservation Threshold.

8.1.1 There is a forest conservation threshold established for all land use categories, as provided in Section 8.1.2 of this FCO. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of ¼ acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.

8.1.2 After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plat, stormwater management plan, grading and sediment control plans, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the forest conservation fund, according to the formula set forth in Sections 8.1.2 and 8.1.3 of this FCO and consistent with Section 6.2 of this FCO, and the following forest conservation thresholds for the applicable land use category:

| Category of Use                                                     | Threshold Percentage |
|---------------------------------------------------------------------|----------------------|
| Open space                                                          | 25%                  |
| R1 & R2 Residential                                                 | 25%                  |
| Planned development district (when no commercial uses are included) | 25%                  |
| Agricultural                                                        | 20%                  |
| Institutional                                                       | 20%                  |
| Residential merchant                                                | 15%                  |
| Mixed residential service                                           | 15%                  |
| Mixed commercial                                                    | 15%                  |
| Mixed commercial industrial                                         | 15%                  |

|                                                     |            |
|-----------------------------------------------------|------------|
| Economic development flex                           | <b>15%</b> |
| Amusement park                                      | <b>15%</b> |
| Planned development district (with commercial uses) | <b>15%</b> |
| Town residential commercial/mixed use district      | <b>15%</b> |
| Town business park                                  | <b>15%</b> |

#### 8.1.3 Calculations.

- a. For all existing forest cover measured to the nearest 1/10<sup>th</sup> 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 ¼ acre planted for each acre removed.
- b. 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 Section 8.1.3(a). The calculation of the credit shall be according to the criteria provided in the Technical Manual.
- c. For all existing forest cover measured to the nearest 1/10<sup>th</sup> acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold.

### 9.0 PRIORITIES AND TIME REQUIREMENTS FOR AFFORESTATION AND REFORESTATION

**9.1** The required sequence for Afforestation and Reforestation, after techniques for retaining existing forest on the site have been exhausted, is as follows:

9.1.1 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 Technical Manual.

9.1.2 In any designated area approved by the Town, 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 50 percent of the area of forest cover protected.

9.1.3 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 at least 35 feet wide and covering at least 2,500 square feet of area.

**9.2** The Town may determine the necessity for and approve of a sequence other than the one described in Section 9.1 of this FCO for a specific project, if necessary, to achieve the objectives of the Town's land use plan or land use policies, or to take advantage of opportunities to consolidate forest conservation efforts.

**9.3** The following shall be considered priority for reforestation or afforestation:

- 9.3.1 Those techniques that enhance existing forest and involve selective clearing or supplemental planting on-site;
- 9.3.2 On-site afforestation or reforestation where the retention options have been exhausted, using methods selected in accordance with Section 9.4 of this FCO, and the location being selected in accordance with this Section 9.3 of this FCO;
- 9.3.3 Off-site afforestation or reforestation within the Town, including appropriate Town public

easement and/or property (e.g., Town public park/recreational areas), where the applicant has demonstrated that no reasonable alternative on-site exists.

**9.4** In the cases cited in Section 9.3 of this FCO, the method shall be selected in accordance with Section 9.5 of this FCO, and the location shall be selected in accordance with Section 9.3 of this FCO.

**9.5** Standards for meeting afforestation or reforestation requirements shall be established using one or more of the following methods:

- 9.5.1 Establish or enhance forest buffers adjacent to intermittent and perennial streams, and their buffers, to widths of at least 50 feet;
- 9.5.2 Establish or increase existing forested corridors to connect existing forests within or adjacent to the site to facilitate wildlife movement, where practical, a minimum of 300 feet wide;
- 9.5.3 Establish or enhance forest buffers adjacent to critical habitats where appropriate;
- 9.5.4 Establish or enhance existing nonforested areas on 100-year floodplains;
- 9.5.5 Establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value great than 0.35 including the slopes of ravines or other natural depressions;
- 9.5.6 Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights of way;
- 9.5.7 Establish forest areas adjacent to existing forests so as to increase the overall area of contiguous forest cover, when appropriate.
- 9.5.8 Use native plant materials for afforestation or reforestation when appropriate.

**9.6** A person required to conduct afforestation or reforestation under this FCO shall accomplish it within 2 years following issuance of a grading permit, taking into consideration the phasing of the development project.

## **10.0 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION**

**10.1** Forest Conservation Fund. There is established a Town forest conservation fund, and will be administered by the Town.

10.1.1 If a person subject to this FCO demonstrates to the satisfaction of the Town that reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person shall contribute money to the Town's forest conservation fund:

- a. At a rate of \$1.00 per square foot of the area of required planting for project's within a designated Priority Funding Area (PFA); and/or
- b. at a rate of \$1.20 per square foot of the area of required planting for project's occurring outside a PFA, including Municipal PFA Comment Areas.
- c. The rate established for the Town's forest conservation fund may be adjusted for inflation as determined by the Department annually by regulation.

10.1.2 Money contributed instead of afforestation or reforestation under this FCO shall be paid at issuance of the grading permit for the development project.

10.1.3 The Town shall accomplish the reforestation or afforestation for which the money is deposited into the Fund within 3 years, as appropriate, after receipt of the money.

10.1.4 Money contributed under this FCO to the local forest conservation fund:

- a. May be used only for costs directly related to afforestation or reforestation site identification, acquisition, preparation, and maintenance of existing forests, and achieving urban canopy goals;
- b. Shall be deposited in a separate forest conservation fund; and
- c. Shall not revert to the General Fund.

10.1.5 The reforestation or afforestation requirement under this FCO shall occur in the Town, and in the watershed in which the project is located.

10.1.6 If the reforestation or afforestation cannot be reasonably accomplished in the Town and watershed in which the project is located, then the reforestation or afforestation shall occur in the following prioritized order:

- a. Afforestation/reforestation efforts occur within the Town in a different watershed than in which the project is located;
- b. Afforestation/reforestation efforts occur within the watershed in which the project is located, outside of the Town.

## **11.0 RECOMMENDED TREE SPECIES**

**11.1** The Town has adopted and incorporated the following resources into its Technical Manual, with approved tree species to be used for any required afforestation or reforestation:

- 11.1.1 Frederick County Forest Resource Ordinance (FRO) Exhibit L1, List of Native Overstory Trees in Frederick County, and
- 11.1.2 Frederick County FRO Exhibit L2, List of Native Understory Trees and Shrubs in Frederick County.

**11.2** The Town must approve tree species that stray from the-Frederick County tree lists in Sections 11.1.1 and 11.1.2.

## **12.0 FINANCIAL SECURITY FOR AFFORESTATION AND REFORESTATION**

**12.1** A person required to conduct afforestation or reforestation under this FCO shall furnish security in the form of a cash bond, an irrevocable letter of credit from a Maryland lending institution or any recognized lender satisfactory to the Town, or other security approved by the Town. The surety shall:

- 12.1.1 Assure that the afforestation, reforestation, and the associated management plan are conducted and maintained in accordance with the approved forest conservation plan;
- 12.1.2 Be in the amount equal to the estimated cost, as determined by the Town; and
- 12.1.3 Be in a form and of a content approved by the Town Attorney.

**12.2** After 2 years, the person required to furnish security under Section 12.1 of this article may request reduction of the amount of the financial security by submitting a written request to the Office with a justification for reducing the amount including estimated or actual costs to ensure afforestation and reforestation requirements are met.

12.2.1 The Office 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.

**12.3** If, after 2 years or 3 growing seasons, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Technical Manual, the remaining amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.

**12.4** A local Forest Conservation Program may incorporate the financial security set forth in Section 12 of this FCO.

## **13.0 STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES**

**13.1** The Town shall adopt the standards for the protection of trees from construction activity that are at least as effective as the standards provided in the Technical Manual.

**13.2** Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this FCO, the applicant shall demonstrate to the Town that protective devices have been established.

## **14.0 VARIANCES FROM THE FOREST CONSERVATION ORDINANCE**

### **14.1 Procedure.**

14.1.1 A person may request a variance from this FCO or the requirements of Natural Resources Article, Sections 5-1601--5-1612, Annotated Code of Maryland, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

14.1.2 An applicant for a variance shall:

- a. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- b. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- c. Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- d. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- e. 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
- f. Verify that the granting of a variance will not adversely affect water quality.

14.1.3 The Town shall make findings that the applicant has met the requirements of Sections 14.1.1 and 14.1.2 of this FCO before the Town may grant a variance.

14.1.4 Notice of a request for a variance shall be given to the Town within 15 days of receipt of a request for a variance.

14.1.5 There is established by this FCO the right and authority of the Town to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article Sections 5-1601--5-1612, Annotated Code of Maryland, or this FCO.

## **15.0 PENALTIES**

**15.1** A person found to be in noncompliance with this FCO, regulations adopted under this FCO, the forest conservation plan, or the associated maintenance or protective agreements, shall be assessed by the Town a penalty of up to \$1.20 per square foot per day of the area found to be in noncompliance with required forest conservation.

**15.2** Money collected under Section 15.1 of this FCO shall be deposited in the forest conservation fund, as required by Section 10 of this FCO, and may be used by the Town for purposes related to implementing this FCO including payment of consultant fees required for same.

15.2.1 On a finding by an auditor made in consultation with the Town of the Attorney General that a local authority (the Town) has misappropriated Town Forest Conservation Funds, the DNR may require the Town to submit payment to the State Conservation Fund for the amount of any misappropriated local conservation funds; and

15.2.2 Request that the Attorney General investigate payments and expenditures of funds collected by the Town.

**15.3** In addition to the provisions under Section 15.1 of this FCO, a person who violates any provision of this FCO or a regulation or order adopted or issued under this FCO is liable for a penalty not to exceed \$10,000 per violation which may be recovered in a civil action brought by the Town.

15.3.1 Each day a violation continues is a separate violation.

**15.4** The Town may seek an injunction requiring the person to cease violation of this FCO and take

corrective action to restore or reforest an area.

15.4.1 The violator is responsible for any fees incurred in recovery and civil actions required.

## **16.0 ADDITIONAL REQUIREMENTS FOR STATE OR LOCAL PROGRAMS**

### **16.1 Enforcement-**

#### **16.1.1 Complaints and Orders.**

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

- i. A provision of Natural Resources Article, Sections 5-1601—5-1611, Annotated Code of Maryland;
- ii. A regulation of this FCO;
- iii. A forest stand delineation or forest conservation plan;
- iv. An administrative order.

b. The complaint shall:

- i. Identify the violator and the location of the violation;
- ii. State the provision violated;
- iii. State the specific facts on which the complaint is based; and
- iv. Provide an opportunity to request a hearing to contest the complaint.

#### **16.1.2 Corrective Action.**

a. At any time, including during an enforcement action, the Town may issue an administrative order requiring the violator to take corrective 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.

#### **16.1.3 Service.**

a. A complaint, order, or other administrative notice issued by the Town 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 FCO is effective immediately, according to its terms, when it is served.

#### **16.1.4 Hearings.**

a. The Town shall give notice and hold a hearing under this chapter in conformance with State Government Article, Sections 10-210—10-217, Annotated Code of Maryland.

b. Within 10 calendar days of receiving a complaint, order, or notice under this chapter, the violator may request a hearing, in writing.

c. If a person has been served with an order for corrective action, the person may request a stay in conjunction with a request for a hearing.

d. 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 10 business days of the Town's receipt of the request.

e. Administrative Action for a Forest Conservation Plan or Bond. The Town 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.

f. Statutory Remedies. The provisions of this subtitle may not be construed to limit or affect the authority of the Town to proceed against violators under Natural

**16.2 Plan Suspension and Revocation.** The Town may suspend or revoke a plan after notice to the violator and opportunity for a hearing has been provided if the Town determines that one or more of the following has occurred:

- 16.2.1 Failure of a violator to post a bond required under Section 6.0 of this FCO;
- 16.2.2 Failure to comply, with the requirements of an administrative action or order issued under this subtitle, or for a violation of Natural Resources Article, Sections 5-1601—5-1612, Annotated Code of Maryland;
- 16.2.3 Misrepresentation in the application process or failure to disclose a relevant or material fact;
- 16.2.4 Violation of a forest conservation plan requirement;
- 16.2.5 Substantial deviation from the conditions, specifications, or requirements of a plan;
- 16.2.6 Changes in site conditions, new information, or amended regulatory requirements necessitate revocation before a person's rights under a plan have vested.

**16.3 Notice.**

Except as provided under Section 6.10 of this FCO, the Town may not suspend or revoke a forest conservation plan unless the Town first gives the violator written notice by certified mail of the specific facts that warrant suspension or revocation, and an opportunity to be heard.

**16.4 Contested Case Hearings.**

- 16.4.1 On receipt of written notice to suspend or revoke a forest conservation plan, the violator has 10 calendar days to request a contested case hearing.
- 16.4.2 A hearing under this FCO shall be conducted in conformance with State Government Article, Sections 10-201--10-217, Annotated Code of Maryland.
- 16.4.3 If the Town does not receive a request for a hearing, the forest conservation plan shall be suspended or revoked.

**16.5 Emergency Action.**

- 16.5.1 The Town may order the immediate suspension of a forest conservation plan if the Town finds that the public health, safety, or welfare imperatively requires the emergency suspension.
- 16.5.2 The Town shall promptly give the violator written notice that the emergency action has been taken.
- 16.5.3 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.

**17.0 ANNUAL REPORT**

**17.1** On or before March 1 of each year, the Town shall submit to the Department the previous year's actions under this FCO containing the following data:

- 17.1.1 The number, location, and type of projects subject to the provisions of this FCO;
- 17.1.2 The amount and location of acres cleared, conserved, and planted, including any areas located in the 100-year floodplain, in connection with a development project;
- 17.1.3 The amount of reforestation and afforestation fees and noncompliance penalties collected and expended;
- 17.1.4 The costs of implementing this FCO;
- 17.1.5 The number, location and types of violations and types of enforcement activities conducted; and
- 17.1.6 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.

**18.0 BIENNIAL REVIEW BY THE MARYLAND DEPARTMENT OF NATURAL RESOURCES**

**18.1** Town shall submit the necessary documentation to comply with COMAR 08.19.02.04.

**19.0 EFFECTIVE DATE AND SUBSEQUENT AMENDMENTS**

**19.1** This FCO is hereby enacted and becomes effective \_\_\_\_\_, 20\_\_\_\_\_. This FCO may be amended as required. All amendments to this FCO are subject to the approval of the Department.