

ORDINANCE NO. 2026 - 04

FOREST CONSERVATION

“The following ordinance replacing Article VIII: Forest Conservation and Article XIII 13.1 Forest Conservation Definitions 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 _____ day of _____, 2026.

Mayor and Town Council

New Market, Maryland

Mayor Winslow F. Burhans, III

Michaela Mueller, Vice President of Council

Kevin DeLany, Councilmember

Nicole Moravy, Councilmember

Kristina Trunnell, Councilmember

Howard Wilson, Councilmember

ATTEST:

Michelle Mitchell, 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. This Ordinance has been revised to comply with the requirements set forth in the Natural Resources – Forest Preservation and Retention Act (2023 Laws of Maryland, Chapter 542 / SB 526) and the Forest Conservation Act – Modifications (2024 Laws of Maryland, Chapter 457 / HB 1511).

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 of Maryland Forest Conservation Manual, Fourth Edition, December 2024, as it may be amended, shall serve as the Town of New Market’s (Town) Forest Conservation Technical Manual, hereafter referred to as the “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 to both preserve the agricultural heritage of the community, to protect and conserve the existing forest resources against further degradation, and increase tree canopy over time as required under the Natural Resources – Forest Preservation and Retention Act as amended.

1.6 To preserve, protect and increase forest resources, the Town may adopt forest conservation thresholds and afforestation and reforestation requirements as part of its local forest conservation program that are more stringent than the forest conservation thresholds and afforestation and reforestation requirements in the Subtitle/Section, not including the solarvoltaic exemption (SB 526).

2.0 FOREST AND TREE CONSERVATION DEFINITIONS

In this Ordinance the following terms have the meanings indicated.

2.1 "Afforestation" means:

- A. Establishment of a forest on an area from which forest cover has been absent for a long period of time; or
- B. Planting of open areas which are not presently in forest cover.

2.2 "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.

Per Ordinance 2017-04 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.

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

2.4 "Approved forest management plan" means a document:

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

2.5 "Caliper" means the diameter measured at 2 inches above the root collar.

2.6 "Champion tree" means the current State Champion Tree (including county and municipal trees) of that species as designated by the Department.

2.7 "Commercial and industrial uses" means manufacturing operations, office complexes, shopping centers, and other similar uses and their associated storage areas, yarding and parking areas, in the town's Mixed Commercial (MC) District, Mixed Commercial Industrial (MCI) District, or Economic Development Flex zoning district

2.8 "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.

2.9 "Critical habitat area" means a critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall: A) Be likely to contribute to the long-term survival of the species; B) Be likely to be occupied by the species for the foreseeable future; and C) Constitute habitat of the species, which is considered critical under Natural Resources Article, §§4- 2A-04 and 10-2A-06, Annotated Code of Maryland.

2.10 "Critical habitat for endangered species" means a habitat occupied by an endangered species as determined or listed under Natural Resources Article, §§4-2A-04 and 10-2A-04, Annotated Code of Maryland.

2.11 "Declaration of intent" means:

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

2.12 "Degraded Forest" means a forest ecosystem that has lost its natural structure, function, and/or diversity due to human activity or other disturbances, leading to diminished capacity to regenerate and provide ecosystem services.

2.13 "Town" means the Town of New Market, that is responsible for implementing the local forest conservation program.

2.14 "Development Project" means the grading or construction activities subject to a grading or sediment control permit occurring on a specific tract that is 40,000 square feet or greater and includes redevelopment, except for sites in the historic district overlay zoning district where it shall mean the grading or construction activities occurring on a specific tract that is 40,000 square feet or greater and includes redevelopment.

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

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

2.16 "Forest"

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

2.17 "Forest Conservancy District Board" means the forestry board created for each State forest conservancy district under Natural Resources Article, §§5-601-5-610, Annotated Code of Maryland.

2.18 "Forest conservation" means the retention of existing forest or the creation of new forest at the levels set by the State or the Department.

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

2.20 "Forest Conservation Technical Manual" means the State of Maryland Forest Technical Manual incorporated by reference, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

2.21 "Forest conservation plan" means a plan approved pursuant to Natural Resources Article, §§5- 1606 and 5-1607, Annotated Code of Maryland.

2.22 "Forest cover" means the area of a site meeting the definition of forest in this ordinance

2.23 "Forest Land" means [a biological community dominated by tree and other woody plants that is capable of producing timber or other wood products with a stocking of at least 100 trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground]. A contiguous patch of trees that is at least 1 acre in size exhibiting at least one transect of at least 120 feet in width. "Forest Land" includes forested areas that have been cut but not converted to other land uses.

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

2.24-1 "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.

2.24-2 "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.

2.24-3 "Forest mitigation bank plan" means a plan submitted for approval of a forest mitigation bank to the Town, or a local government with an approved local program, by an individual proposing to establish a forest mitigation bank.

2.25 "Forest stand delineation" means the methodology for evaluating the existing vegetation on a site proposed for development, as provided in the Technical Manual.

2.26 "Growing season" means the period of consecutive frost-free days as stated in the current soil survey for this county published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)- (f).

2.27 "High density residential areas" means areas zoned for densities greater than 1 dwelling unit per acre, including both existing and planned development and their associated infrastructure, such as roads, utilities, and water and sewer service, and corresponds with both the R1 and R2 zoning districts of the Town.

2.28 "Institutional development area" means schools, colleges and universities, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries and corresponds to the Town Institutional (I) District.

2.29 "Intermittent stream" means a stream in which surface water is absent during a 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 verification.

2.30 "Landscaping plan" means a plan:

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

2.31 "Linear project" means a project which:

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

2.32 "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.

2.33 "Lot" means a unit of land, the boundaries of which have been established by subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland, and this Ordinance without an approved forest stand delineation and forest conservation plan. Unless the lot is exempt due other sections of this ordinance – further subdivisions of a lot less than 40,000 does not trigger this ordinance.

2.32 "Maintenance agreement" means the short-term management agreement associated with

afforestation or reforestation plans required under Natural Resources Article, §5-1605, Annotated Code of Maryland, and this Ordinance.

2.33 "Minor development project" means a project:

- A. On more than 40,000 square feet and less than 5 acres of land containing not more than four lots per acre; or
- B. Substantively similar as defined by the Town and approved by the State.

2.34 "Mixed use development" means a single, relatively high density development project, usually commercial in nature, which includes two or more types of uses, and located in the following Town Zoning District Classification(s): Residential Merchant (RM), Mixed Residential Service (MRS), Mixed Commercial (MC), Mixed Commercial Industrial (MCI), Planned District Development (PDD) Town Residential/Commercial (TRC) and Economic Flex (EDF).

2.35 "Natural regeneration" means the natural establishment of trees and other vegetation with at least 400 woody, free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

2.36 "Net tract area" means:

- A. Except in agriculture and open space districts, the total area of a site, including both forested and non-forested areas, to the nearest 1/10 acre, reduced by that area where forest clearing is restricted by another local ordinance or program;
- B. In agriculture and open space districts, the part of the total tract for which land use will be changed or will no longer be used for primarily agricultural or open space activities, reduced by that area where forest clearing is restricted by another local ordinance or program; and
- C. For a linear project:
 - (1) The area of a right-of-way width, new access roads, and storage; or
 - (2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

2.37 "Nontidal Wetlands".

A. "Nontidal wetlands" means an area that is:

- (1) 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
- (2) Considered a nontidal wetland in accordance with the 1987 U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual and current USACE Regional Supplement that has superseded the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989)," and as may be amended and interpreted by the U.S. Environmental Protection Agency.

(3) and as defined and regulated under the Code of Maryland Regulations Title 26 Part 4 Subtitle 23 Nontidal Wetlands (COMAR 26.23), as amended.

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

2.38 "Offsite" means outside of the limits of the area encompassed by the tract.

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

2.40 "100-year flood" means a flood which has a 1 percent chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams), a body of water with a watershed less than 400 acres is excluded.

2.41 "100-year 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 100-year frequency storm event, or a 100-year flood.

2.42 "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.

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

2.44 "Planned Development District" 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 the Town with at least 20 percent of the land permanently dedicated to open space and corresponds to the Town zoning district classifications PDD, TRC and TBP.

2.45 "Planted Green Infrastructure" means the implementation of natural systems in man-made environments to imitate and/or replicate natural forest processes.

2.46 "Priority Areas for retention and protection" are defined in the 2024 Laws of Maryland (Chapter 457 / HB 1511), and described in Sections 7.1 and 7.21 of this FCO.

2.47 "Priority funding area" means an area designated as a priority funding area under State Finance and Procurement Article, §5-7b-02, Annotated Code of Maryland.

2.48 "Project plan" means a construction, grading, or sediment control activity on an area of 40,000 square feet or greater by a local agency.

2.49 "Public utility" means any:

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

2.50 "Qualified conservation" means the conservation of all or part of an existing forest that:

- (1) Has been approved by the appropriate State of local forest conservation program for the purpose of establishing a forest mitigation bank; and
- (2) Is encumbered in perpetuity by a restrictive easement, covenant, or another similar mechanism recorded in the county land records to conserve its character as a forest.

2.51 "Reforestation."

A. "Reforestation" or "reforested" means the:

- (1) Creation of a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years; or
- (2) Establishment of a forest according to procedures set forth in the Technical Manual.

B. "Reforestation" or "reforested" includes landscaping of areas under an approved landscaping plan establishing a forest at least 35 feet wide and covering 2,500 square feet or more of area.

C. "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.

2.52 "Regulated activity" means any of the following activities, when that activity occurs on a unit of land which is 40,000 square feet or greater:

- A. Subdivision;
- B. Grading;
- C. An activity that requires a sediment control permit; or
- D. Project plan of a local agency that includes disturbance of an area which is 5,000 square feet or greater

2.53 "Retention" means the deliberate holding and protecting of existing trees, shrubs, or plants on the site according to established standards as provided in the Technical Manual.

2.54 "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.

2.55 "Seedling" means an unbranched woody plant, less than 24 inches in height and having a diameter of less than 1/2 inch measured at 2 inches above the root collar. Refer to the Technical Manual for the use of seedling stock.

2.56 "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.

2.57 "Stream buffer" means all lands lying within 50 feet, measured from the stream channel of any intermittent stream and within 100 feet measured from the stream channel of any perennial stream

2.58 "Stream restoration project" means an activity that:

- A. Is designed to stabilize stream banks or enhance stream function or habitat located within an existing stream, waterway, or floodplain;
- B. Avoids and minimizes impacts to forests and provides for replanting on-site an equivalent number of trees to the number removed by the project;
- C. May be 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. Is not performed to satisfy stormwater management, wetlands mitigation, or any other regulatory requirement associated with proposed development activity.

2.58 "Subdivision" means any division of a unit of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

2.59 "Timber Harvesting."

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

2.60 "Tract" means property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, project plan approval, or areas subject to this law.

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

2.62 "Tree" means a large, branched woody plant having one or several self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

2.63 - "Tree Canopy" means the crowns of deciduous and evergreen woody vegetation that is the product

of natural growth or human planting; and greater than 3 meters (9.84 feet) in height.

2.64 "Variance."

- A. "Variance" means relief from Natural Resources Article, §§5-1601-5-1612, Annotated Code of Maryland, or this Ordinance.
- B. "Variance" does not mean a zoning variance.

2.65 "Watershed" means all land 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.

2.66 "Whip" means an unbranched woody plant greater than 24 inches in height and having a diameter of less than 1 inch measured at 2 inches above the root collar. Refer to the Technical Manual for the use of whip stock.

3.0 APPLICATION

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

3.1.1 Any person, including the Town and its units, who has applied for subdivision, a project plan, grading, or a sediment control approval on units of land 40,000 square feet or greater after the effective date of this Ordinance;

3.1.2 A public utility that is not exempt under Section 3.2E and F of this FCO;

3.1.3 A unit of the Town, including a public utility or public works project, making application for a subdivision, project plan, grading, or sediment control approval on areas 40,000 square feet or greater.

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 **subject to** 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. Is the subject of a declaration of intent as provided for in Section 3.3 of this FCO and approved by the Town.

3.2.3 Agricultural activities not resulting in a change in land use category, including the operation of orchards and tree farms and the construction of agricultural support buildings and other related structures built using accepted best management practices.

3.2.4 A person engaging in an agricultural activity clearing 40,000 square feet or greater of forest within a 1-year period, may not receive an agricultural exemption, unless the person files a

declaration of intent as provided for in Section 3.3 of this FCO, 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.

3.2.5 The cutting or clearing of public utility rights-of-way licensed under Public Utility Companies, Sections 7-207 and 7-208 or 7-205, Annotated Code of Maryland or land for electric generating stations licensed under Public Utility Companies Sections 7-207 and 7-208 or 7-205 Annotated Code of Maryland, provided that:

- 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 to minimize the loss of forest;

3.2.6 Routine maintenance or emergency repairs of existing public utility rights-of-way licensed under Public Utility Companies, Section 7-207 and 7-208 or 7-205, Annotated Code of Maryland;

3.2.7 Except for a public utility subject to Section 3.2F of this FCO, 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 Ordinance; or
- b. The right-of-way's initial construction was approved under this Ordinance;

3.2.8 A residential construction activity conducted on a single existing lot of any size of record at the time of application provided that the activity on the lot:

- a. Does not result in the cumulative cutting, clearing, or grading of more than 20,000 square feet of any forest;
- b. Does 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 filed with the Town, as provided for in Section 3.3 of this FCO, stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest;

3.2.9 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 cumulative cutting, clearing or grading of more than 20,000 square feet of forest; and
- b. 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.

3.2.10 A final subdivision plat, project plan, grading plan, stormwater management or sediment control plan approved before July 1, 1991.

3.2.11 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.

3.2.12 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.

3.2.13 An activity on a previously developed area covered by impervious surface and located in the priority funding area at the time of the application for subdivision plan, grading, or sediment control permit approval;

3.2.14 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.

3.2.15 Maintenance or retrofitting of a stormwater management structure that may include clearing of vegetation or removal and trimming of trees, 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

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, 3.2.4, 3.2.7, 3.2.8 and 3.2.11 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 3.2.3, 3.2.4 and 3.2.4 of this FCO.

3.3.11 Transit-Oriented Development, as defined under Section 7-101 of the Transportation Article, provided that the area of forest removed shall be:

- a. Reforested at a ratio of at least ¼ acre replanted for each acre removed; or
- b. Mitigated in a manner in which ½ acre of forests is permanently protected for each acre removed;

3.3.12 Construction of a new federal government facility projected to house the employment of at least 2,500 persons; and

3.3.13 Construction of multifamily housing, consisting of a single structure containing at least 25 dwelling units, provided that the area of forest removed will be;

- a. Reforested at a ratio of at least ¼ acre replanted for each acre removed; or
- b. Mitigated in a manner in which ½ acre of forest is permanently protected for each acre removed.

4.0 GENERAL REQUIREMENTS

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

4.1.1 Submit to the Town Planning Commission (PC), no less than 20 days prior to a regularly scheduled meeting of the PC:

- a. a forest stand delineation and a forest conservation plan for the lot or parcel on which the development is located; and
- b. Use methods approved by the Town, as provided in the Technical Manual, to protect retained forests and trees during construction.
- c. Not perform any construction activity in the **critical root zone** of a tree that is to be retained; unless identified on the Forest Conservation Plan and approved by the Town PC.

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 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 Qualified Professional who meets the requirements stated in COMAR08.19.06.01A.

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 or 100-foot buffers, locations of 100-year floodplains, nontidal wetlands, and steep slopes 25% or more;
- 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;
- 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 as amended; and
- e. Other information Town determines is necessary to implement this FCO, including but not limited to reviews by the United States Fish and Wildlife Service (USFWS) the Department Wildlife and Heritage Service and the Maryland Historical Trust (MHT).

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, may substitute for a full or intermediate delineation if:

- a. 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 Town; and
- c. Other information required by this FCO.

5.1.6 An approved forest stand delineation may remain in effect for a period not longer than 5 years.

5.1.7 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.

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 forests and priority areas specified in Natural Resources Article, Sec. 5-1607(c)(1), 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
 - iii. A requirement for public comment on plans that will develop priority areas of any size.
- 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, qualifies for a variance as described in meets the conditions of Section 14.0 of this FCO.

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 FCO, 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 law;
- 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 are 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 08.19.06.01A.

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;
 - iv. Areas of unforested stream buffers, unforested floodplain, and forested floodplain
 - v. Areas of stream buffered conserved, afforested, and reforested.

vi. Area of forested nontidal wetland to be cut or cleared are regulated under Environmental Article, Title 9 and excluded from the net tract area

- 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. Incorporate other information the Town determines is necessary to implement this FCO, including but not limited to justification for the use of whips or seedling stock (see definitions). Per the Technical Manual a longer-term management and monitoring agreement may be used to ensure that forest will be established.

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.

6.2.5. Approval of the preliminary forest conservation plan shall occur prior to submittal of a Final Forest conservation plan.

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. At least 20 days before approval of the Final Forest Conservation Plan the Town Engineer (TE) or TFC shall:

- i. provide notice that is consistent with local authority notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in Natural Resources Article, §5-1607, Annotated Code of Maryland; and
- ii. On a net tract area of at least 5 acres and if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment to the PC before plan approval; or
 - i. For any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.
 - ii. For any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

b. Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent.

c. i. Within 45 calendar days after receipt of the final forest conservation plan, the Town shall notify the applicant whether the forest conservation plan is complete and approved.

- ii. If the Town fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
- iii. The Town may require further information or extend the deadline for an additional 15 calendar days under extenuating circumstances.
- iv. At the request of the applicant, the Town may extend the deadline under extenuating circumstances.

d.i. A person petitioning for a judicial review by the Board of Appeals of an approved forest conservation plan shall file the petition to the Town not later than 30 days after approval of the forest conservation plan.

- ii. Any judicial review of a forest conservation plan shall be:
 - a. Conducted in accordance with the Maryland state law; and
 - b. Limited to the record compiled by the local authority,

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 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 zoning district categories:

i. Agricultural (AG) and Open Space (OS)

b. 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. Institutional (I)

ii. High Density residential (R1 and R2)

iii. Planned Development District (PDD, Floating)

iv. Residential Merchant (RM)

v. Mixed Residential Service (MRS)

vi. Mixed Commercial District

vii. Mixed Commercial/Industrial District

viii. Amusement park

c. Clustering and other innovative land use techniques that protect and establish forests where open space is preserved, sensitive areas are protected, and development is physically concentrated, may be used, consistent with the established zoning district categories

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. shall be accomplished within 2 years or 3 growing seasons following issuance of a grading permit, taking into consideration the phasing of the development project.

7.1.3 Afforestation requirements must conform to the conditions in Section 5-1607 and 5-1609 of this subtitle, including payment into the Town fund, if afforestation on-site or off-site cannot reasonably be accomplished.

7.1.3 Linear projects that involve no change in land use may not be subject to afforestation requirements.

7.1.4 Solar photovoltaic facilities may not be subject to afforestation requirements of this FCO.

7.2 Retention. 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, intermittent streams and their buffers at least 50 feet from the stream channel, perennial streams at least 100 feet from the stream channel, steep slopes, nontidal wetlands, and critical habitats;
- b. Contiguous forest that connects the largest undeveloped or heavily vegetated tracts of land within and adjacent to the site;
- c. Forest suitable for forest interior-dwelling species (FIDS);
- d. Forest located in a Tier II or Tier III high quality watershed as identified by the Department of the Environment;
- e. Forest located in a water resource protection zone, a reservoir watershed, or wellhead protection area as identified by a local jurisdiction; and
- f. Forests in urban areas as delineated in the priority urban forest mapping included in the State Forest Technical Manual that are most important for providing wildlife habitat or mitigating flooding, high temperatures, or air pollution;

7.2.1 Retention. 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 of the U.S. Fish and Wildlife Service, COMAR 08.03.08 or the Department;
- b. Trees that are part of an historic site or have been designated by the Department or the Town as a national, State, county Champion Tree; and
- c. 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, the Department, or the Town.

7.2.2 Retention Clearing Justification.

- a. The Department or Town shall issue written findings and justification for any clearing of a priority retention area as described in 7.2 and 7.2.1 of this FCO.
- b. Any judicial review of a final determination made under this paragraph shall be:
 - i. Conducted in accordance with the Maryland state law; and
 - ii. Limited to the record compiled by the local authority.

8.0 REFORESTATION

8.1 Subject to Section 5-1606.1 of the Natural Resources Article, except for as provided in 8.1.1, for all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of 1 acre planted for every 1 acre removed; and

8.1.1 For all existing forest cover located in a priority funding area designated under section 5-7B-03 of the State Finance and Procurement Article, and not identified as a priority for retention as described in Natural Resources Article §5-1607 Annotated Code of Maryland measure to the nearest 1/10 acre cleared on the net tract area, the area of forest removed shall be reforested at a ratio of ½ acre planted for every 1 acre removed.

8.2 Upon meeting the reforestation and afforestation requirements in this section, all unforested riparian buffers on site shall be afforested and reforested, unless the applicant demonstrated to the Local Authority that afforestation in the riparian buffer:

- a. Would be in conflict with allowable uses as established for the riparian buffer;
- b. Is located on park property and conflicts with the mission and established stewardship practices of the park; or
- c. Is not suitable for the establishment and retention of the required planting materials, in which case substitute environmental protection measures must be implemented.

8.3 The reforestation requirements under this section shall be accomplished within shall be accomplished within 2 years or 3 growing seasons 2 years or 3 growing seasons following issuance of a grading permit, taking into consideration the phasing of the development project.

8.4 After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, purchase of credits from a forest mitigation bank, or payment into the forest conservation fund, according to the 1:1 replacement ratio in Section 8.1 and consistent with Section 6.2 of this FCO.

9.0 PRIORITIES AND TIME REQUIREMENTS FOR AFFORESTATION AND REFORESTATION

9.1 Sequence for Afforestation and Reforestation.

9.1.1 After techniques for retaining existing forest on-site have been exhausted, the Town's preferred sequence for afforestation and reforestation is as follows:

- a. Forest creation in accordance with a forest conservation plan using one or more of the following (listed by Town's order of preference):
 - i. Transplanted or nursery stock (1 -2" caliper),
 - ii. Whip and seedling stock, or
 - ii. Natural regeneration where it can be adequately shown to meet the objective of the Technical Manual.
 - iii. Per the Technical Manual, a longer-term management and monitoring agreement may be used to ensure that forest will be established.

9.1.2 On private property throughout the Town (with property owner permission), in other designated areas approved by the Town Council, including right-of-way, or designated in a Town master plan adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992:

- a. The planting of 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;
- 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;

c. The restoration of on-site or off-site degraded forest, without grading, the removal of invasive species, wildlife control, the improvement of understory, and new tree plantings, as appropriate, in which case the afforestation or reforestation credit granted may not exceed 50% of the area of forest restored; and the restored degraded forest should be placed in an easement, and

d. The establishment of planted green infrastructure or planted environmental site design practices beyond the amount required under Section 4-203 of the Environment Article may grant full credit as a mitigation technique.

e. 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.

f. The minimum size stock in 9.1.1.ii, is not usable for street trees, i.e., 1-2" caliper trees must be used.

9.2 A sequence other than the one described in Subsection 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 Alternative Afforestation, Reforestation and Preservation;

9.3.1 The Town may propose and the Department may approve alternative afforestation, reforestation, and preservation requirements (alternative requirements) that will result, at minimum, in maintaining the existing forest cover over a 4-year period.

9.3.2 If the Department determines the proposed alternative requirements are not expected to maintain the Town's baseline level of forest cover, the Department will reject the requirements and provide written notice of the elements of the proposal that require revision by December 31, 2028.

9.3.3 The Department will determine whether the proposed alternative requirements are expected to maintain the Town's existing level of forest cover by

a. considering credits generated under Section 5-16-7(B)(3) of the subtitle to be forested acreage, and;

b. Base its determination on the Town's annual reports required under Section 5-1613 of the subtitle; and exclude the effect of a project approved before July 1, 2024, or described in Section 5-1602(B).

9.3.4 On or after January 1, 2029, the Department may rescind approval of the alternative requirements if the Town does not meet these conditions;

a. Maintain or expand the existing level of forest cover over two consecutive 2-year reporting periods; or

b. Submit the local annual reports required in Section 17 of this FCO.

9.4 The following shall be considered priority for reforestation or afforestation:

9.4.1 Those techniques that enhance existing forest and involve selective clearing or supplemental planting on-site;

9.4.2 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 subsection; and

9.4.3 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 Town's satisfaction that environmental benefits associated with off-site afforestation or reforestation exceed those derived from on-site

planting.

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 or 100 feet, respectively.
- 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 non-forested 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 greater 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 to increase the overall area of contiguous forest cover, when appropriate.
- 9.5.8 Use native plant materials for afforestation or reforestation when appropriate, unless non-native plants are more appropriate (provide documentation).

9.6 A person required to conduct afforestation or reforestation under this FCO shall accomplish it within 1 year or 2 growing seasons 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.

10.1.1 The Town has a forest conservation fund that meets the requirements of Natural Resources Article, §5-1610 (h-1), Annotated Code of Maryland.

10.1.2 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. For a project inside the designated priority funding area, as defined in Natural Resources Article, §5-1610, Annotated Code of Maryland, at a rate of \$1.00 per square foot of the area of required planting with the amount adjusted by the Town based on the previous year's inflation rate; and,
- b. For a project outside a priority funding area including any Comment Areas, at a rate of \$1.20 per square foot of the area of required planting.

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

10.1.4 The Town shall accomplish the reforestation or afforestation for the equivalent number of acres which the money is deposited into the Fund within 2 years or 3 growing seasons, whichever time period is greater, after receipt of the money.

10.1.5 Money deposited under this FCO into the local forest conservation fund:

- a. May be spent on the costs directly related to afforestation or reforestation, including 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. May not revert to the General Fund.

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

a. If the reforestation or afforestation cannot be reasonably accomplished in the Town, then the reforestation or afforestation shall occur within the watershed in which the project is located.

10.2 Use of a Forest Mitigation Bank

10.2.1 If a person subject to this Ordinance demonstrates to the satisfaction of the Department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, the person may contribute credits from a forest mitigation bank.

10.2.2 The use of qualified conservation in a forest bank may be used to meet;

a. UP to 50% of the afforestation or reforestation requirement, and the granted credit may not exceed 50% of the forest area encumbered in perpetuity; or

b. if the Town proposes, after public comment, the Department will review local program requests for increasing Qualified Conservation mitigation beyond 50% of the afforestation or reforestation requirement, up to 60% of the required mitigation.

c. Additional requirements and timeframes for qualified conservation are specified in SB 526 and HB 1511 as amended.

10.3 – Establishing Forest Mitigation Banks

10.3.1 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 Ordinance.

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:

(a) Establish or enhance forested buffers adjacent to intermittent and perennial streams and coastal bays. Intermittent streams have a 50-foot buffer and perennial streams have a 100-foot buffer;

(b) 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;

(c) Establish or enhance forest buffers adjacent to critical habitats where appropriate;

(d) Establish or enhance forested areas in 100-year floodplains;

(e) Stabilize slopes of 25 percent or greater;

(f) 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;

- (g) Establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights-of-way; or
- (h) 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:

(a) Vicinity map of the proposed mitigation bank site;

(b) Simplified forest stand delineation which meets the criteria in COMAR 08.19.04.02;

(c) 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

(d) Proposed 2-year maintenance agreement that:

(i) Sets forth how the areas afforested or reforested will be maintained to ensure protection and satisfactory establishment;

(ii) Complies with COMAR 08.19.04.05C (4)(a); and

(iii) 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:

(a) 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

(b) 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.

11.0 RECOMMENDED TREE SPECIES

11.1 Recommended Tree Species List.

11.1.1 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 Town including;

a. The Frederick Forest Resource Ordinance (FRO) Exhibit L1, List of Native Overstory Trees in Frederick County, and

b. Frederick County FRO Exhibit L2, List of Native Understory Trees and Shrubs in Frederick

County.

c. Species that should not be used are listed in Exhibit K – Partial List of Invasive Exotics Tree and Shrub Species in Frederick County and the Exotic species in the Technical Manual.

11.1.2 The MDNR supports the right-tree-right place concept in urban settings. The MDNR Roadside Tree Law Recommended Tree List shows tree sizes of Street Tree Species and Cultivars to guide tree selection in an urban setting, to avoid conflicts with the built environment. The Town recognizes that some species may no longer be appropriate due to disease susceptibility.

11.2 The Town must approve tree species that are inconsistent with the intent of Section 11.1.1 and 11.1.2.

12.0 FINANCIAL SECURITY FOR AFFORESTATION AND REFORESTATION

12.1 Bonding.

12.1.1 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:

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

12.2 After one growing season, the person required to furnish security under Section 12.1 of this FCO 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 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 or in COMAR 08.19.05.01B.

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.

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.

14.1.5 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. In accordance with the enforcement procedures in Land Development Ordinance Article XII Enforcement

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 Public Notice.

16.1.1 At least 20 days before approval of the forest conservation plan, the Town or the Department shall:

- a. provide notice that it is consistent with the Town notice requirements to all property owners abutting and adjacent to the boundary of the subject property of any proposed clearing of a priority retention area as described in this FCO and Section 5-1607 of the Subtitle; and
 - i. on a net tract area of at least 5 acres and if at least 75% of the priority retention area is proposed to be cleared, provide an opportunity for written and verbal comment before plan approval; or
 - ii. for any other project where priority retention area is proposed for clearing, provide an opportunity for public written comment before plan approval.

16.1.2. Property separated from the subject property by a public right-of-way shall be considered abutting and adjacent.

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 Resources Article, Section 5-1612, Annotated Code of Maryland.

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 August 31 of each year, the Town shall submit to the Department the previous fiscal year's actions (July 1 – June 30) 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, and forested nontidal wetlands in connection with a development project;

17.1.3 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;

17.1.4 The costs of implementing this FCO;

17.1.5 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;

17.1.6 Number of acres debited from each forest mitigation bank since the last annual report;

17.1.7 Forest mitigation banks inspected since the last annual report;

17.1.8 The number, location and types of violations and types of enforcement activities conducted; and

17.1.9 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.

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.