

**TOWN OF NEW MARKET
FOREST CONSERVATION ORDINANCE**

ORDINANCE NO. 05-07

FOREST CONSERVATION ORDINANCE

OF

NEW MARKET, MARYLAND

AN ORDINANCE 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.

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(OCTOBER 2005 REVISION)

Article I: Purpose and General Provisions

1.1 Purpose.

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

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. This Ordinance 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.

Article II: 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;
 - B. Planting of open areas which are not presently in forest cover; or
 - C. Establishment of a forest according to procedures set forth in the Town of New Market Forest Conservation Manual.
- 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 agricultural commercial enterprise.
- 2.2(a) **"Agricultural and conservation areas" means undeveloped areas zoned for densities of less than or equal to one dwelling unit per 3 acres. (OCTOBER 2005 REVISION)**
- 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 State Department of Natural Resources' forester assigned to the county in which the property is located; and
 - B. Which operates as a protective agreement for forest conservation as described in Natural Resources Article, §5-1607(e) and (f), Annotated Code of Maryland.
- 2.5 "Caliper" means tree diameter measured at 2 inches above the root collar.
- 2.6 "Champion tree" means the largest tree of its species within the United States, the state, county, or municipality, as determined pursuant to the criteria set

forth in the Town of New Market Forest Conservation Manual.

- 2.7 "Champion tree of the State" means a tree which appears in the Town of New Market Forest Conservation Manual list of State champion trees.
- 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 deemed 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; and
 - B. The document required under COMAR 08.19.01.05 or this Ordinance.
- 2.12 "Development Project".
 - A. "Development project" means the grading or

construction activities occurring on a specific tract that is 10,000 square feet or greater.

B. "Development project" includes redevelopment.

2.13 "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 Council;

C. Designation by the Office that a:

(1) Development project has been completed, or

(2) Particular stage of a staged development project, including a planned unit development, have been completed.

a. Projects being developed in sections will be required to submit an approved Forest Conservation Plan along with documentation for each section's individual approval stage.

2.14 "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, within the limits of the dripline.

B. "Forest" includes:

(1) Areas that have at least 100 live trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground and larger; and

(2) Forest areas that have been cut but not cleared; and

(3) Duff, leaf litter, or understorey.

C. "Forest" does not include orchards.

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

- 2.16 "Forest conservation" means the retention of existing forest or the creation of new forest at the levels prescribed by the Office.
- 2.17 "Forest Conservation and Management Agreement" means an agreement as stated in the Tax-Property Article, Sec. 8-211, Annotated Code of Maryland.
- 2.18 "Forest conservation plan" means a plan approved pursuant to Article VI of this Ordinance.
- 2.19 "Forest cover" means the area of a site meeting the definition of Forest.
- 2.20 "Forest management plan" means a plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.
- 2.21 "Forest stand delineation" means the description and evaluation of the existing vegetation on a site proposed for development, as set forth in the Town of New Market Forest Conservation Manual.
- 2.22 "Forested slopes" means an area meeting the definition of forest and growing on an area with a **slope** of 25% or more. **(OCTOBER 2005 REVISION)**
- 2.23 "Growing season" means the period during which consecutive frost-free days occur as stated in the current soil survey for Frederick County published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)–(f).
- 2.24 "Introduction" means appearance on the agenda of a regularly scheduled meeting of the Town Planning Commission as a presentation item.
- 2.25 "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.

2.25(a) "Linear project" means a project which: (OCTOBER 2005 REVISION)

A. Is elongated with nearly parallel sides; (OCTOBER 2005

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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 (OCTOBER 2005 REVISION)

C. May traverse fee simple properties through defined boundaries, or established easement rights. (OCTOBER 2005 REVISION)

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

2.27 "Lot" means a unit of land, the boundaries of which have been established **[as a result of a deed or previous] by** subdivision of a larger parcel, and which will not be the subject of further subdivision, **as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland, and this Ordinance** without an approved forest stand delineation and forest conservation plan." (OCTOBER 2005 REVISION)

2.28 "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.

2.29 "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.

2.30 "Net tract area" means

A. Except in agricultural and conservation areas, the total area of a site, including both forested and nonforested areas, to the nearest **1/10** acre, reduced by the area found to be within the boundaries of the 100-year floodplain; and (OCTOBER 2005 REVISION)

B. In agricultural and conservation areas, part of the total tract for which land use will be changed or no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain.

C. For a linear project: (OCTOBER 2005 REVISION)

(1) The area of a right-of-way width, new access roads, and storage; or (OCTOBER 2005 REVISION)

(2) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description. (OCTOBER 2005 REVISION)

2.31 "Nontidal wetland".

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 publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency. (OCTOBER 2005 REVISION)

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

2.32 "Office" means the Town unit charged with implementing the local forest conservation plan.

2.33 "Off-site" means not on the same tract as the proposed related activity, but within the corporate limits.

2.34 "On-site" means the area located within the legal boundary of the property or properties on which the regulated activity or activities are proposed, are occurring, or have occurred, as set forth in the deed for that area, plus any contiguous land owned by the same individual as set forth in the deed or deeds for that contiguous land, as these boundaries existed at the commencement of the regulated activity.

2.35 "100-year flood" means a flood which has a 1% 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.

- 2.36 "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.
- 2.37 "Overstorey" means that portion of trees in a forest that form the uppermost layer or canopy.
- 2.38 "Person" means the federal government, the state, any 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.
- 2.39 "Planned unit development (PUD)" means a development comprised of a combination of land uses or varying intensities of the same land use in accordance with the Zoning Ordinance of the Town of New Market.
- 2.40 "Project plan" means a construction, grading, stormwater, or sediment control activity on an area of 10,000 square feet or greater by a local agency.
- 2.41 "Public utility" means any:
- A. Transmission line or electric generating station; or
 - B. Water, sewer, electric, gas, [and] telephone or television cable service line. (OCTOBER 2005 REVISION)
- 2.42 "Reforestation".
- A. "Reforestation" or "reforested" means to create a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50% 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.
 - B. "Reforestation" or "reforested" includes landscaping of areas under an approved, drawn to scale landscaping plan showing dimensions and details for establishing a forest at least 35 feet wide and covering 2500 square feet or more of area, as distinguished from landscaping in general, using native or indigenous plants when appropriate.
- 2.43 "Regulated activity" means any of the following activities, when that activity occurs on a unit of land which is 10,000

square feet or greater:

- A. Subdivision;
 - B. Grading;
 - C. An activity that requires a sediment control or stormwater management control permit;
 - D. Project plan of a local agency.
- 2.44 "Retention" means the deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the Town of New Market Forest Conservation Manual.
- 2.45 "Sediment control permit" means the authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland.
- 2.46 "Seedlings" 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.
- 2.47 "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.
- 2.48 "Stream" means an intermittent or perennially flowing drainage course.
- 2.49 "Stream buffer" means all lands lying within 50 feet, measured from the top of each normal bank of any perennial or intermittent stream.
- 2.50 "Subdivision" means any division of a parcel of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.
- A. "Subdivision" includes resubdivision.
- 2.51 "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.

- 2.52 "Town of New Market Forest Conservation Manual" means the **[technical manual incorporated by reference,] Maryland State Forest Conservation Technical Manual, latest edition,** used to establish standards of performance required in preparing forest stand delineations and forest conservation plans. **(OCTOBER 2005 REVISION)**
- 2.53 "Tract" means property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, stormwater management approval, project plan approval, or areas subject to this subtitle.
- 2.54 "Tree" means a large, branched woody plant having 1 or more self-supporting stems or trunks that reach a height of at least 20 feet at maturity.
- 2.55 "Understory" means herbaceous and woody plants growing under the tree canopy or overstorey.
- 2.56 "Variance".
- A. "Variance" means relief from Natural Resources Article, Sec. 5-1601--5-1612, Annotated Code of Maryland, or this Ordinance.
- B. "Variance" does not mean a zoning variance.
- 2.57 "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.
- 2.58 "Whip" means an unbranched woody plant **[not less than 21 inches in height, averaging] greater than** 24" in height, and having a diameter of less than 1 inch measured at 2 inches above the root collar. **(OCTOBER 2005 REVISION)**

Article III: Application

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

- A. 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 ordinance for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 10,000 square feet or greater; and
- B. 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 ordinance 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 Paragraph C of Subsection 3.2, which application has not been denied.
- C. Any public utility not exempt under Section 3.2 D and E of this article.
- D. Applicants under this ordinance 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 requirements of the Forest Conservation Program.

3.2 This Ordinance does not apply to:

- A. Highway construction activities under Natural Resources Article, §5-103, Annotated Code of Maryland.
- B. Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under Tax-Property Article, §8-211, Annotated Code of Maryland, that:

(1) Were completed before July 1, 1991; or

- (2) Were completed on or after July 1, 1991, and the property on which the cutting is conducted is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation, and;
 - (3) Are subject to a declaration of intent as provided for in Section 33 of this article by the landowner and approved by the local soil conservation district or sediment control agency;
- C. 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 Office, which includes:
- (1) A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
 - (2) A statement that no development will take place for 5 years after an agricultural activity has cleared forest; and
 - (3) A sketch map of the property which shows the area to be cleared;
- D. The cutting or clearing of public utility rights-of-way licensed under **[Article 78, §§ 54A and 54B or §54-I,] Public Utility Companies, §§7-207 or 7-208 or 7-205,** Annotated Code of Maryland or land for electric generating stations licensed under **[Article 78 §§54A and 54B or §54-I,] Public Utility Companies §§7-207 or 7-208 or 7-205** Annotated Code of Maryland, if: **(OCTOBER 2005 REVISION)**
- (1) Any required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
 - (2) Cutting or clearing of the forest is conducted so as to minimize the loss of forest, under the supervision of the Town Forestry Consultant;
- E. Any routine maintenance or emergency repairs of existing public utility rights-of-way initially constructed under the guidelines of this Ordinance;
- F. Any **residential construction** activity conducted on a

single existing lot of any size provided that the activity on the lot **(OCTOBER 2005 REVISION)**

- (1) will not result in the cumulative cutting, clearing, or grading of more than 10,000 square feet of any forest;
 - (2) 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 Ordinance; and
 - (3) 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.
- G. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:
- (1) does not result in the cumulative cutting, clearing or grading of more than 10,000 square feet of forest; and
 - (2) is the subject to a declaration of intent filed with the Office as provided for in Section 3.3 of this article, which states that transfer of ownership may result in a loss of exemption.
- H. A real estate transfer to provide a security leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:
- (1) The transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and
 - (2) Both the grantor and the grantee file a declaration of intent, as provided for in Section 3.3 of this article.
- I. A final subdivision plat, project plan, grading plan, stormwater management or sediment control plan approved before July 1, 1991.
- J. A planned unit development (PUD) that by December 31, 1991, has:
- (1) met all requirements for approval, and
 - (2) obtained final plat approval by the Office.

3.3 Declaration of Intent.

- A. The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, Sec. 5-103 and 5-1601--5-1612, Annotated Code of Maryland, and this Ordinance.
- B. A person seeking an exemption under Section 3.2 B, C, F, G, and H of this article shall file a declaration of intent with the Town.
- C. The declaration of intent is effective for 5 years.
- D. The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity:
 - (1) Does not conflict with the purpose of any existing declaration of intent, and
 - (2) Complies with the applicable requirements for an exempted activity.
- E. If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:
 - (1) There shall be an immediate loss of exemption, or
 - (2) There may be a noncompliance action taken by the Town, as appropriate, under, this Ordinance.
- F. An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Ordinance are satisfied.
- G. The Town may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
 - (1) Meet the retention, afforestation and reforestation requirements established in Articles III-XIII of this ordinance;
 - (2) Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the declaration of intent;
 - (3) Be subject to other enforcement actions appropriate under Natural Resources Article, Sec. 5-1601-5-1612, Annotated Code of Maryland, and this

ordinance: or

(4) File a declaration of intent with the Town.

H. 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 ordinance.

I. Commercial Logging and Timber Harvesting. The requirements for a declaration of intent may be satisfied by a forest management plan for the entire tract, prepared by a forester licensed in Maryland according to Business Occupations and Professions Article, Title 7, Annotated Code of Maryland, which outlines management practices needed to meet the stated objectives for a minimum of 5 years. (OCTOBER 2005 REVISION)

J. Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of intent may be part of an amended sediment and erosion control plan which ensures that the activity meets the conditions for an exemption as stated in Article III, §3.2C and D of this Ordinance. (OCTOBER 2005 REVISION)

Article IV: 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 ordinance for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 10,000 square feet or greater shall, for the lot or tract on which the development is located:
- A. Submit to the Office, no less than 20 days prior to a regularly scheduled meeting of the Planning Commission:
 - (1) a Forest Stand Delineation; and
 - (2) a Forest Conservation Plan;
 - B. Not perform any construction activity in the dripline of a tree that is to be retained; unless identified on the Forest Conservation Plan and approved by the Office;
 - C. Use methods approved by the Office, as provided in the Town of New Market Forest Conservation Technical Manual, to protect retained forests and trees during construction.
 - D. If a local agency or person using state funds makes application to conduct a regulated activity, the provision of COMAR 08.19.04.01D--G apply.
 - E. A substantively complete application for final plat approval shall include those requirements as provided for in the Town of New Market Subdivision Regulations.
 - F. 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.

Article V: Forest Stand Delineation

5.1 Criteria.

- A. 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.
- B. The Delineation shall be prepared by a registered licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01[B], according to criteria stated in the Town of New Market Forest Conservation **[Manual] Ordinance, Article XVII. (OCTOBER 2005 REVISION)**
- (1) The Delineation is subject to review by the Town Forestry Consultant.
- C. The Delineation shall be used to determine the most suitable and practical areas for forest conservation and shall include:
- (1) A topographic map identifying **intermittent and perennial** streams, steep slopes over 25%, floodplains, 100-year floodplains, and wetlands; and **(OCTOBER 2005 REVISION)**
 - (2) A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more; and
 - (3) Forest stand maps indicating species, location, average diameter of trees and describing and delineating overstorey and understorey forest types; and
 - (4) Information required by the Town of New Market Forest Conservation Manual; and
 - (5) Any other information required by the Office.
- D. If approved by the Office, a simplified delineation may be submitted for an area:
- (1) When no forest cover is disturbed during a construction activity; and
 - (2) Designated to be under a long term protective

agreement.

- E. The Office shall consider a simplified forest stand delineation complete if it includes:
 - (1) All requirements under Section 5.1C(1), (2), and (4) of this article;
 - (2) A map showing existing forest cover as verified by field inspection; and
 - (3) Other information required by this ordinance.

- F.
 - (1) Within 30 calendar days after introduction of the forest stand delineation, the Office shall notify the applicant whether the forest stand delineation is complete and correct.
 - (2) If the Office fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
 - (3) The Office may require further information or extend the deadline under extenuating circumstances.

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

Article VI: Forest Conservation Plan

6.1 The Forest Conservation Plan shall be prepared, subject to review by the Town Forestry Consultant, and signed by a registered licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01[B], who shall: **(OCTOBER 2005 REVISION)**

- A. Refer to the approved Forest Stand Delineation developed for this site according to criteria stated in the Town of New Market Forest Conservation Manual;
- B. Give priority to techniques for retaining existing forest on the site.
- C. Present a completed Forest Stand Delineation;
- D. Prepare reforestation and afforestation plans as stated in Articles VII and VIII of this Ordinance;
- E. Prepare graphic indication of forest protection and retention areas and all methods inclusive therein;
- F. Review impact of development on forested area;
- G. Prepare forest inventory using forest measurement equipment; approved by the Office if the professional satisfies the following criteria:

(1) A Forest Conservation Plan shall:

- a. Be submitted with the first of the following submitted for the site:
 - .1 A preliminary subdivision plat;
 - .2 An application for stormwater management approval;
 - .3 An application for a grading permit; or
 - .4 An application for a sediment control permit;
- b. Include a map of the site drawn at the same scale as the grading or stormwater management plan or subdivision plat;
- c. Include a table that lists, in square feet:
 - .1 The net tract area; and

- .2 The total area of forest conservation that the applicant proposes to provide, including both on-site and off-site areas;
- d. Include a clear graphic indication of the forest conservation provided on the site, showing areas where retention of existing forest or reforestation or afforestation is planned;
 - e. Include a construction timetable showing the sequence for tree conservation procedures;
 - f. Include a reforestation and/or afforestation plan prepared by a registered, licensed forester, approved by the Office, with a timetable, description of site, site preparation methods, species, size of planting stock, spacing, and any other information required by the Office;
 - g. Show locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation;
 - h. Show the planned limits of disturbance;
 - i. Show proposed stockpile areas;
 - j. Incorporate a commitment to complete all required afforestation and reforestation within 2 years of the issuance of a grading permit, taking into consideration the phasing of the development project;
 - k. Incorporate a binding 3-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - watering; and
 - reinforcement planting provision if survival rates fall below required standards, as set forth in the Town of New Market Forest Conservation Manual;
 - l. Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
 - provides protection for areas of forest conservation, including areas of

reforestation, afforestation, and retention;

- provides a legally protective agreement for areas of forest conservation via conservation easements, deed restrictions, and covenants or other similarly effective means which shall provide preservation in perpetuity.
- limits uses in areas of forest conservation to those uses that are consistent with forest conservation, including recreational activities and any forest management practices that are used to preserve forest; and

m. Include the substantive elements required under Section 6.1A, G1.c--i,n, 6.2A--8, and 6.3A--D.

n. Any other information the Office or Town of New Market Forest Conservation Manual requires.

6.2 In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.

A. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Office:

- (1) How techniques for forest retention have been exhausted;
- (2) Why the priority areas specified in Natural Resources Article, Sec. 5-1607(c), Annotated Code of Maryland, cannot be left in an undisturbed condition;
- (3) How the sequence for consideration of priority areas was determined; and
- (4) Where on the site in priority areas afforestation and reforestation will occur in compliance with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland.

B. The applicant shall demonstrate to the satisfaction of the Office that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished in accordance with Article 14 of this ordinance if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.

- 6.3 Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under **[Natural Resources Article, Sec. 8-1201-1211,] Environment Article, Title 9,** Annotated Code of Maryland, **[and COMAR 08-05-04]** is subject to both the nontidal wetlands regulatory requirements and the requirements of this law, subject to the following: **(OCTOBER 2005 REVISION)**
- 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 ordinance, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under **[COMAR 08.05.04] 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. **(OCTOBER 2005 REVISION)**
 - 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.
- 6.4 Within 45 calendar days after introduction of the Forest Conservation Plan, the Office shall notify the applicant whether the forest Conservation plan is complete and approved.
- 6.5 If the Office fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.
- 6.6 The Office may require further information or extend the deadline under extenuating circumstances.
- 6.7 The Office's review of a Forest Conservation Plan shall be concurrent with the review of the subdivision plat.
- A. In cases of staged development, each plat application must be accompanied by an approved Forest Conservation Plan already submitted for the project.
- 6.8 The Forest Conservation Plan must be resubmitted along with

the plat for final plat approval.

- 6.9 The Office 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.
- 6.10 The Office may issue a stop work order against any person who violates a provision of this Ordinance or any regulation, order, approved plan, or management agreement.
- 6.11 Before revoking approval of a Forest Conservation Plan, the Office shall notify the violator in writing and provide an opportunity for a hearing.
- 6.12 If a Forest Conservation Plan is required by this Ordinance, a person may not cut, clear, or grade on the development site until the Office has approved the plan or the person will be in violation.
- 6.13 The Plan cannot be altered without approval from the Office.

Article VII: Afforestation and Retention

- 7.1 Afforestation Requirement. A person making application after the effective date of this ordinance for subdivision or stormwater management plan approval, a grading permit, or a sediment control permit for an area of land of 10,000 square feet or greater, shall:
- A. Conduct afforestation on the lot or tract in accordance with the following:
 - (1) A tract having less than 20 percent of its area in forest cover shall be afforested up to at least 20 percent.
 - B. Comply with the following when cutting into forest cover that is currently below the afforestation percentage described in Section 7.1 (A) of this article:
 - (1) The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
 - (2) Forest cut or cleared below the required afforestation level shall be reforested or afforested at a 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. 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 Office, that reasonable efforts have been made to protect them:
- 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;
 - C. Trees, shrubs, or plants identified on the list of rare, threatened, or endangered species of the United States Fish and Wildlife Service or State of Maryland Department of Natural Resources;

D. Trees that:

- (1) Are part of a historic site;
- (2) Are associated with a historic structure; or
- (3) Have been designated by the state or the Office as a national, state, county or municipal champion tree; and

E. Any tree having a diameter measured at 4.5 feet above the ground of:

- (1) 30 inches or more; or
- (2) 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.

Article VIII: Reforestation

8.1 Forest Conservation Threshold.

A. [Any land which is deforested, regardless of its zoning category, shall be reforested, at a ratio of one acre planted for every acre removed, or portion thereof removed] There is a forest conservation threshold established for all land use categories, as provided in Subsection B of this article. The forest conservation threshold means the percentage of the 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."
(OCTOBER 2005 REVISION)

B. 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, [as specified in A. above] according to the formula set forth in Subsections B and C of this article and consistent with §6.2 of this article, and the following forest conservation thresholds for the applicable land use category:
(OCTOBER 2005 REVISION)

<u>Category of Use</u>	<u>Threshold Percentage</u>
<u>(1) Agricultural and conservation areas</u>	<u>50 percent;</u>
<u>(2) Medium density residential areas</u>	<u>25 percent;</u>
<u>(3) Institutional development areas</u>	<u>20 percent;</u>
<u>(4) High density residential areas</u>	<u>20 percent;</u>
<u>(5) Mixed use and planned unit development areas</u>	<u>15 percent;</u>
<u>(6) Commercial and industrial use areas</u>	<u>15 percent.</u>

(OCTOBER 2005 REVISION)

C. Calculations.

- (1) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of ¼ acre planted for each acre removed.
- (2) Each acre of forest retained on the net tract

area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Town of New Market Forest Conservation Technical Manual.

- (3) For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold.

(OCTOBER 2005 REVISION)

**Article IX: 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:
- A. Selective clearing and supplemental planting on-site;
 - B. On-site afforestation or reforestation, using transplanted or nursery hardwood stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground or conifers which are at least 3 feet in height;
 - C. On-site afforestation or reforestation, using whip stock or seedlings.
 - [D. Landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area;] (OCTOBER 2005 REVISION)**
 - [E]D. Off-site afforestation or reforestation within the Town, including appropriate Town public easement and/or property (e.g., Town public park/ recreational areas), shall be as specified for on-site reforestations; (OCTOBER 2005 REVISION)**
 - [F]E. Off-site afforestation or reforestation densities will be as specified in the Town of New Market Forest Conservation Manual, including within appropriate Town public easement and/or property (e.g., Town public park/ recreational areas); (OCTOBER 2005 REVISION)**
 - [G]F. Natural regeneration on-site;
 - [H]G. Natural regeneration off-site;
 - H. 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; (OCTOBER 2005 REVISION)**
 - I. Acquisition of an off-site protection easement on existing forested areas not currently protected 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; (OCTOBER 2005 REVISION)**
 - J. 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. (OCTOBER 2005 REVISION)

- 9.2 The following shall be considered priority for reforestation or afforestation:
- A. To establish or enhance forest buffers adjacent to streams to widths of at least 50 feet;
 - B. To establish or enhance existing nonforested areas on 100-year floodplains;
 - C. To 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;
 - D. To establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - E. To 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;
 - F. To establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights of way;
 - G. To establish forest areas adjacent to existing forests so as to increase the overall area of contiguous forest cover, when appropriate.
 - H. Use native plant materials for afforestation or reforestation when appropriate.
- 9.3 The Town may determine the necessity for and approve of a sequence other than the one described in Section 9.1 of this Article for a specific project.
- 9.4 A person required to conduct afforestation or reforestation under this article shall accomplish it within 2 years following issuance of a grading permit, taking into consideration the phasing of the development project.

Article X: Payment Instead of Afforestation and Reforestation

10.1 Forest Conservation Fund.

- A. If a person subject to this Ordinance demonstrates to the satisfaction of the Office that reforestation or afforestation on-site or off-site cannot be reasonably accomplished in accordance with the provisions of Article 14 of this ordinance, the person shall contribute money, at a rate of \$1.00 per square foot of the area of required planting, into the Town forest conservation fund.
- B. Money contributed instead of afforestation or reforestation under this article shall be paid at issuance of the grading permit for the development project.
- C. The Town shall accomplish the reforestation or afforestation for which the money is deposited within 3 years, as appropriate, after receipt of the money.
- D. Money contributed under this article:
 - (1) May be used only for costs directly related to afforestation or reforestation, including consultation, site identification, acquisition, preparation and maintenance;
 - (2) Shall be deposited in a separate forest conservation fund; and
 - (3) Shall not revert to the general fund.
- E. The reforestation or afforestation requirement under this article shall occur in the Town, and in the watershed in which the project is located.
- F. **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: (OCTOBER 2005 REVISION)**
 - (1) Afforestation/reforestation efforts occur within sub-watershed in the Town**
 - (2) Afforestation/reforestation efforts occur within the watershed in the Town**
 - (3) Afforestation/reforestation efforts occur within**

the watershed in the County
(4) Afforestation/reforestation efforts occur using
Town's Fee-In Lieu program.

(OCTOBER 2005 REVISION)

Article XI: Recommended Tree Species

11.1 Tree species used for afforestation or reforestation **[shall be native to the county, when appropriate,]** may be selected from the Maryland DNR Tree List and Planting Guide website at www.dnr.state.md.us/forests. Species may be chosen from the recommended tree list made available from Maryland DNR according to COMAR 08.07.02.02.B(8) or from Exhibit L, List of Native Trees in Frederick County, of the Frederick County Forest Resource Ordinance Program (see website link www.co.frederick.md.us/govt/DevReview/FROUpdate/FROD/Exhibit L.pdf). New Market Planning and Zoning board must approve species that reside or stray from the Maryland DNR tree lists. **[and selected from a list of approved species established by the Office.]** (November 2005 Revision)

[11.2The Office shall adopt a list of tree species to be used and incorporation it into the Town of New Market Forest Conservation Manual.] (November 2005 Revision)

**Article XII: Financial Security for
Afforestation and Reforestation**

12.1 A person required to conduct afforestation or reforestation under this article 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 Office; and
- C. Be in a form and of a content approved by the Town Attorney.

12.2 After two 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.

- A. The Office shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
 - (1) The number of acres;
 - (2) The proposed method of afforestation or reforestation;
 - (3) The cost of planting materials or replacement materials;
 - (4) The cost of maintenance of the afforestation or reforestation project; and
 - (5) Other relevant factors.

12.3 If, after 3 years, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Town of New Market Forest Conservation 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 12.1A--C of this article.

**Article XIII: 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 State of Maryland Department of Natural Resources Forest Conservation Manual.
- 13.2 Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Ordinance, the applicant shall demonstrate to the Office that protective devices have been established.

Article XIV: Variances

14.1 Procedure.

- A. A person may request a variance from this ordinance or the requirements of Natural Resources Article, Sec. 5-1601--5-1612, Annotated Code of Maryland, if the person demonstrates that enforcement would result in unwarranted hardship to the person.
- B. An applicant for a variance shall:
 - (1) Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - (2) Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - (3) Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - (4) Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
 - (5) Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - (6) Verify that the granting of a variance will not adversely affect water quality.
- C. The Office shall make findings that the applicant has met the requirements of Subsections A and B of this article before the Office may grant a variance.
- D. Notice of a request for a variance shall be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.
- E. There is established by this ordinance the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article. Sec. 5-16-1--5-1612, Annotated Code of Maryland, or this ordinance.

Article XV: Penalties

- 15.1 A person found to be in noncompliance with this Ordinance, regulations adopted under this Ordinance, the forest conservation plan, or the associated 3-year management agreement, shall be assessed by the Office the penalty of 30 cents per square foot per day of the area found to be in noncompliance with required forest conservation.
- 15.2 Money collected under Subsection 14.1 of this article shall be deposited in the forest conservation fund required by Article X of this Ordinance, and may be used by the Office for purposes related to implementing this Ordinance including payment of consultant fees required for same.
- 15.3 In addition to the provisions under Subsection 14.1 of this article, a person who violates any provision of this Ordinance or a regulation or order adopted or issued under this Ordinance is liable for a penalty not to exceed \$10,000 which may be recovered in a civil action brought by the Office.
- A. Each day a violation continues is a separate offense.
- 15.4 The Town may seek an injunction requiring the person to cease violation of this Ordinance and take corrective action to restore or reforest an area.
- A. The violator is responsible for any fees incurred in recovery and civil actions required.

**Article XVI Forest Conservation Maintenance
and Management Agreement**

16.1 Short Term Protective Agreements.

A. Maintenance Agreements.

- (1) Application. A person required to conduct afforestation or reforestation under a local or State program shall, include in the forest conservation plan a binding maintenance agreement for the length of 3 years, as specified in the Town of New Market Forest Conservation Manual.
- (2) Approval procedures and timing shall be consistent with the procedures provided in the local program.
- (3) The maintenance agreement shall detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in Chapter 3 of the Town of New Market Forest Conservation Manual.
- (4) The person required to conduct the afforestation or reforestation, after this referred to as the "obligee", shall present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:
 - (a) An executed deed conveying title to a selected site to the obligee;
 - (b) An executed conservation easement agreement;
 - (c) Written evidence of the landowner's consent to the use of a selected site;
 - (d) A fully executed option agreement, long-term lease agreement, or contract of sale for a selected site; or
 - (e) Other written evidence of a possessory or ownership interest in a selected site.
- (5) The Town of New Market shall be a signatory to the maintenance agreement, or shall be designated a third-party beneficiary of the agreement.
- (6) The Office or local authority may not release a cash bond or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands

where afforestation or reforestation will occur.

- (7) The maintenance agreement shall provide for access by the Office or local authority to the afforestation or reforestation site.

B. Bonding.

(1) Application.

(a) A person required to conduct afforestation or reforestation, or to deposit money into a state or local fund under the State or local program pursuant to Article 14 of this ordinance shall include a cash bond or other financial security as an element of a forest conservation plan.

(b) This section does not apply to agencies of any federal, state, county or municipal government.

(2) Requirements. A financial security shall be furnished in the form of:

(a) A cash bond which shall be made payable to the Town of New Market:

(b) An irrevocable letter of credit which shall:

(i) Be equivalent to the required bond,

(ii) Be issued by a financial institution authorized to do business in Maryland approved by the Town,

(iii) Expressly state that the total sum is guaranteed to be available and payable directly to the Town of New Market on demand in the event of forfeiture, and

(iv) Be in force until all mitigation for reforestation and afforestation and monitoring requirements have been fulfilled to the satisfaction of the Town of New Market or until all contributions have been made to the State or local fund pursuant to Article 14 of this ordinance; or

(c) Other security approved by the Town of New Market.

(3) The financial security shall:

(a) Ensure that:

- (i) The afforestation, reforestation and associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan, or
 - (ii) contributions have been made to the State or local fund pursuant to Article 14 of this ordinance;
 - (b) Be in the amount equal to the estimated cost of afforestation and reforestation, or the amount of the contribution due, as determined by the Town of New Market;
 - (c) Be in a form and content approved by the Town's Attorney.
- (4) The value of the financial security:
- (a) Shall be based on:
 - (i) The cost to perform all work required by the afforestation or reforestation plan if the work had to be performed by or contracted out by the Town of New Market, or
 - (ii) When appropriate, the amount due for a fund contribution pursuant to Article 14 of this ordinance:
 - (b) May be adjusted according to the actual cost of mitigation for afforestation and reforestation or, if the cost of future mitigation work changes, the Town of New Market shall notify the obligee of a proposed adjustment and provide an opportunity for an informal conference on the adjustment; and
 - (c) May be reduced if the obligee proves to the Town of New Market that the costs to complete the mitigation project have been reduced.
- (5) A surety bond or other alternative form of security may not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:
- (a) The surety notifies the Town of New Market and the obligee of its intent to cancel the bond, in writing, by registered mail, not

less than 90 days before cancellation; and

- (b) At least 45 days before the cancellation date indicated in the notice, the obligee files a commitment from a surety, bank, or other issuing entity, approved by the Town, to provide a substitute security which will be effective on the cancellation date indicated in the notice.
- (6) After one growing season or two years, whichever is the greater period of time, the person required to file a bond or other financial security under this ordinance may request reduction of the amount of the bond or other financial security by submitting a written request to the Town of New Market with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure that the afforestation or reforestation requirements are met.
- (7) The Town of New Market shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
- (a) The number of acres;
 - (b) The proposed method of afforestation or reforestation;
 - (c) The cost of planting materials or replacement materials;
 - (d) The cost of maintenance of the afforestation or reforestation project; and
 - (e) Other relevant factors.
- (8) If, after 3 years, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Forest Conservation Manual, the remaining amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.
- (9) Bond Release.
- (a) The bond shall be released on receipt of written notice from the Town of New Market stating that all afforestation or reforestation requirements have been met.

- (b) The written notice shall be sent at the end of the required 3-year monitoring and management period, as provided in the maintenance agreement.
- (c) If the Town of New Market fails to send written notice within 60 days after the end of the monitoring and management period, the bond shall be automatically released.

(10) Financial Security Forfeiture.

- (a) The bond or other financial security may be subject to forfeiture if the obligee fails to comply with:
 - (i) Revocation of the forest conservation plan;
 - (ii) An administrative order; or
 - (iii) An element of the afforestation or reforestation plan:
- (b) The Town of New Market shall notify the obligee, by certified mail, of the intention of the Town to initiate forfeiture proceedings.
- (c) The obligee has 30 days from receipt of the notice of forfeiture to show cause why the bond or other financial security may not be forfeited.
- (d) If the obligee fails to show cause, the bond or other financial security shall be forfeited.

16.2 Long-Term Protective Agreements.

- A. An applicant under the State or local program shall have in effect at all times a long-term protective agreement as provided for in Natural Resources Article, §5-1607, Annotated Code of Maryland, and §§B-D of this ordinance to preserve and protect areas retained, afforested, or reforested.
- B. Approved Forest Management Plan.
 - (1) Procedure for Approval.
 - (a) An application for approval of a forest management plan shall include all information required in the Forest

conservation Manual.

- (b) The forest management plan shall be:
 - (i) Legally binding from the date of approval;
 - (ii) Prepared by a licensed professional forester;
 - (iii) Submitted to the Maryland Department of Natural Resources' forester assigned to the county where the property is located; and
 - (iv) May be amended periodically, as provided for in §B(2) of this ordinance.
- (c) The Maryland Department of Natural Resources' forester shall review the plan to ensure that it is complete and consistent with the State or local program.
- (d) The Town of New Market shall notify the applicant whether the forest management plan has been approved.

(2) Procedure for Amendment of an Approved Forest Management Plan.

- (a) An approved forest management plan may be amended if there is a change in site conditions or landowner objectives.
- (b) Amendments shall be prepared by a licensed professional forester.
- (c) The amendment shall be submitted to the Maryland Department of Natural Resources' forester assigned to the county where the property is located.
- (d) The forester shall review the amendment to ensure that it is complete and consistent with the State and local program.
- (e) The Town of New Market shall notify the applicant as to whether the amendment has been approved.
- (f) The applicant shall sign the amendment.

C. Forest Conservation and Management Agreement. An

applicant may satisfy the requirement for long-term protection under Natural Resources Article, §5-1607(e), Annotated Code of Maryland, by executing a Forest conservation and Management Agreement, as provided in Tax-Property Article, §8-211, Annotated Code of Maryland, and COMAR 08.07.03.

D. Other Legally Binding Protective Agreements.

(1) Other legally binding protective agreements include:

(a) Covenants running with the land;

(b) Deed restrictions;

(c) Conservation easements; and

(d) Land trusts.

(2) Other legally binding agreements shall provide:

(a) Protection for land forested, afforested, or reforested under Natural Resources Article, §§5-1601--5-1612, Annotated Code of Maryland, and this subtitle; and

(b) Limitation on the uses of forest to those that are consistent with forest conservation.

(3) **Within 30 days of execution, an applicant shall record legally binding protective agreement under this section in the Frederick County land record office. (OCTOBER 2005 REVISION)**

E. Procedure for a Timber Harvesting Plan.

(1) An individual may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan provided that the harvest:

(a) Is consistent with the intent of an approved forest management plan, forest conservation management agreement, or other long term protective agreement;

(b) Is subject to a timber harvest plan;

(i) Prepared by a licensed professional

forester,

(ii) Submitted to the local Forest Conservancy District Board for review and approval, and

(iii) That remains in effect for 2 years; and

(c) Is consistent with the intent and requirements of the approved forest conservation plan.

(2) The local Forest Conservancy District Board shall notify the individual whether the timber harvest plan under §E(1) of this ordinance has been approved.

**Article XVII. Additional Requirements
for State or Local Programs**

17.1 Approved Qualified Professional.

- A. An individual may prepare a forest stand delineation or a forest conservation plan, if the individual:
- (1) Is a licensed forester;
 - (2) Is a licensed landscape architect; or
 - (3) Meets the requirements of §B of this ordinance.
- B. An individual may be approved by the Maryland Department of Natural Resources as a qualified professional if the individual:
- (1) Possesses a 4-year degree in the natural resources sciences, natural resource management, landscape or environmental planning;
 - (2) Has the following:
 - (a) 2 years of professional experience in natural resources sciences, natural resource management, landscape planning or environmental planning, or its equivalent, as determined by the State, or
 - (b) A graduate degree in natural resources and 1 year of professional experience;
 - (3) Has the ability to meet the obligations required by the Forest Conservation Manual to prepare a forest stand delineation and a forest conservation plan; and
 - (4) Satisfactorily completes a forest conservation course offered by the Maryland Department of Natural Resources.
- C. The Maryland Department of Natural Resources shall offer forest conservation courses on a regular basis, which shall demonstrate how to:
- (1) Develop and interpret a forest stand delineation and forest conservation plan according to criteria stated in the Forest Conservation Manual;
 - (2) Prepare and interpret soils, topography, floodplain, wetlands, and site maps;

- (3) Prepare afforestation and reforestation plans according to criteria stated in the Forest Conservation Manual;
- (4) Prepare a sketch map of a site, showing areas of forest retention, proposed reforestation, or afforestation;
- (5) Identify and evaluate protection measures that may be appropriate for forested areas that are sensitive to disturbance;
- (6) Identify flora and fauna, including trees, woody shrubs, plants, and wildlife;
- (7) Diagnose and treat forest pest and disease problems; and
- (8) Understand ecosystem interactions including:
 - (i) Water regime impacts,
 - (ii) Soil variations as they affect existing trees and species selection for afforestation and reforestation,
 - (iii) Wildlife habitats,
 - (iv) Multi-storied plant canopies, and
 - (v) Forest successional stages.

17.2 Training.

A. Seminars for Local Officials.

- (1) The Maryland Department of Natural Resources shall provide a training program to assist local officials in the development of local programs, including one seminar per year for each geographic region of the State for the calendar years of 1992 and 1993.
- (2) For the purposes of this training program the geographic regions are:
 - (a) Central Region -- Baltimore, Carroll, Cecil, Harford, **Howard**, Kent, **Montgomery** and Queen Anne's counties and Baltimore City;
(OCTOBER 2005 REVISION)
 - (b) Eastern Region -- Dorchester, Somerset, Talbot, Wicomico and Worcester counties:
 - (c) Southern Region -- Anne Arundel, Calvert, Charles, **[Howard, Montgomery,]** Prince George's, and St. Mary's counties; and
(OCTOBER 2005 REVISION)

- (d) Western Region -- Allegany, Frederick, Garrett, and Washington counties.

B. Additional Seminars.

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

17.3 Enforcement.

A. Application.

- (1) The provisions of this chapter apply to a person under the State program making application for subdivision or project plan, grading or sediment control permit, on areas 10,000 square feet or greater.
- (2) A local authority may adopt the provisions of this chapter for the enforcement of a local program.

B. Complaints and Orders.

- (1) In addition to sanctions authorized by Natural Resources Article, §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:
 - (a) A provision of Natural Resources Article, §§5-1601--5-1611, Annotated Code of Maryland;
 - (b) A regulation of this ordinance;
 - (c) A forest stand delineation or forest conservation plan;
 - (d) An administrative order.
- (2) The complaint shall:
 - (a) Identify the violator and the location of the violation;

- (b) State the provision violated;
- (c) State the specific facts on which the complaint is based; and
- (d) Provide an opportunity to request a hearing to contest the complaint.

(3) Corrective Action.

- (a) At any time, including during an enforcement action, the Town of New Market 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.

(4) Service.

- (a) A complaint, order, or other administrative notice issued by the Town of New Market 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 ordinance is effective immediately, according to its terms, when it is served.

C. Hearings.

- (1) The Town of New Market shall give notice and hold a hearing under this chapter in conformance with State Government Article, §§10-210--10-217, Annotated Code of Maryland.
- (2) Within 10 calendar days of receiving a complaint,

order, or notice under this chapter, the violator may request a hearing, in writing.

- (3) If a person has been served with an order for corrective action, the person may request a stay in conjunction with a request for a hearing.
- (4) A request for stay may be heard before or during a hearing on the complaint. At the request of a violator, a request for stay may be heard within 10 business days of the Town of New Market's receipt of the request.
- (5) Administrative Action for a Forest Conservation Plan or Bond. The Town of New Market may suspend or revoke a forest conservation plan or forfeit a bond on a forest conservation plan on failure of the violator to comply with the requirements of an administrative order.
- (6) Statutory Remedies. The provisions of this subtitle may not be construed to limit or affect the authority of the Town of New Market to proceed against violators under Natural Resources Article, §5-1612, Annotated Code of Maryland.

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

- (1) Failure of a violator to post a bond required under COMAR 08.19.05.01B:
- (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, §§5-1601-5-1612, Annotated Code of Maryland;
- (3) Misrepresentation in the application process or failure to disclose a relevant or material fact;
- (4) Violation of a forest conservation plan requirement;
- (5) Substantial deviation from the conditions, specifications, or requirements of a plan;
- (6) Changes in site conditions, new information, or amended regulatory requirements necessitate revocation before a person's rights under a plan

have vested.

- E. Notice. Except as provided under §G of this ordinance, the Town of New Market 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.
- F. Contested Case Hearings.
 - (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.
 - (2) A hearing under this ordinance shall be conducted in conformance with State Government Article, §§10-201--10-217, Annotated Code of Maryland.
 - (3) If the Town of New Market does not receive a request for a hearing, the forest conservation plan shall be suspended or revoked.
- G. Emergency Action.
 - (1) The Town of New Market 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.
 - (2) The Town of New Market shall promptly give the violator written notice that the emergency action has been taken.
 - (3) A notice of emergency action shall include a statement of:
 - (a) Specific facts on which the emergency suspension is based; and
 - (b) The violator's opportunity to be heard.

17.4 Statewide Forest Resource Inventory.

- A. By December 31, 1992, the Maryland Department of Natural Resources of Natural Resources shall prepare and provide to local authorities a statewide forest resource inventory that includes:
 - (1) A list of priority areas for reforestation or afforestation of both publicly and privately owned land on a county by county basis; and

(2) Specific areas which contain plants and animal species to be considered as priority areas for forest retention and protection under Natural Resources Article, §5-1607(c), Annotated Code of Maryland.

B. The Maryland Department of Natural Resources shall update the statewide forest resource inventory at least every 5 years **or as considered appropriate.**
(OCTOBER 2005 REVISION)

Article XVIII: Annual Report

18.1 On or before [**July 1**] **March 1** of each year, the Office shall submit to the [**Senate Economic and Environmental Affairs Committee and the House Environmental Matters Committee**] **Department of Natural Resources** a report on:
(OCTOBER 2005 REVISION)

- A. The number, location, and type of projects subject to the provisions of this ordinance;
- B. The amount and location of acres cleared, conserved, and planted in connection with a development project;
- C. The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
- D. The costs of implementing the Forest Conservation Program.

**Article XIX: Biennial Review by the
Maryland Department of Natural Resources**

19.1 The Office shall submit the necessary documentation to comply with COMAR 08.19.02.04.

Article XX: Effective Date and Subsequent Amendments

20.1 This Ordinance is hereby enacted and becomes effective January 1, 1993. This ordinance may be amended as required. All amendments to this Ordinance are subject to the approval of the Department of Natural Resources.

A. This Ordinance does not apply to:

- (1) any final plot of subdivision or any stormwater management, grading, or sediment control plan approved before July 1, 1991; and
- (2) any planned unit development that by December 31, 1991, has:
 - a. met all local requirements for planned unit development approval; and
 - b. obtained final plat approval by the Office.

AND IT IS FURTHER ORDAINED, that this Ordinance shall become effective on the _____ day of _____, 2005.

By Order of the
MAYOR AND COUNCIL
of the
TOWN OF NEW MARKET

Winslow F. Burhans, III, Mayor

Terri Houston

Rita Mueller

Lawrence "Jake" Romanell

Kathleen Snowden

Mark Timberlake

Introduced:

Enacted:

Effective:

Attest:
