

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1197

(Prince George's County Delegation and Montgomery  
County Delegation)

Environment and Transportation

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Prince George's County - Forest Conservation Act - Net Tract Area  
PG/MC 114-16

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This bill establishes that, under the Forest Conservation Act (FCA), in Prince George's County, "net tract area" includes existing forested land that is in a 100-year floodplain if afforestation or reforestation is proposed in or adjacent to the 100-year floodplain.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances.

**Local Effect:** Prince George's County revenues may decrease as a result of a reduction in fee-in-lieu payments received under the county's local forest conservation program.

**Small Business Effect:** Potential meaningful.

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Analysis

**Current Law/Background:**

*Forest Conservation Act*

The Forest Service of the Department of Natural Resources (DNR) administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies to any public or private

subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet or greater, subject to certain exemptions. A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on-site or off-site, payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local authority on reforestation and afforestation. A State Forest Conservation Fund holds funds associated with projects reviewed by the State, and local forest conservation funds are associated with local forest conservation programs.

The determination of how much afforestation (adding of forest land) or reforestation (replacement of cleared forest land) must occur on a given site is based on the “net tract area” of the site and afforestation and conservation thresholds (discussed below). Except in agriculture or resource areas or linear project areas, under FCA, the net tract area is the total area of a site, including both forested and nonforested areas, to the nearest one-tenth acre reduced by that area where forest clearing is restricted by another local ordinance or program.

#### *Prince George’s County Woodland and Wildlife Habitat Conservation Ordinance*

Under the Prince George’s County local forest conservation program – the Woodland and Wildlife Habitat Conservation Ordinance – the net tract area is defined as the gross tract area minus the approved 100-year floodplain and areas previously dedicated for public use.

The Woodland and Wildlife Habitat Conservation Ordinance, similar to FCA, establishes requirements for afforestation and replacement of cleared forest land, which are determined based on afforestation and conservation thresholds that are percentages of the net tract area. Generally, for net tract areas with lower percentages of existing forest land, afforestation must occur so that the percentage of forested land is increased to the afforestation threshold. Under the ordinance, the afforestation threshold is either 15% or 20%, depending on the zoning of the land. Where forest is cleared as part of the development of land, the conservation threshold is a percentage of the net tract area consisting of forest land, below which cleared forest must be replaced at a ratio of 2:1. For clearing above the threshold, cleared forest must be replaced at a ratio of ¼:1. Clearing within the 100-year floodplain must be replaced at a ratio of 1:1. The conservation thresholds range from 15% to 50%, depending on the zoning of the land.

A Woodland Conservation Fund is established by the ordinance and receives fee-in-lieu payments. Money deposited in the fund may be used for specified woodland conservation purposes. Making fee-in-lieu payments, as a method of meeting woodland conservation

requirements, is allowed only when all other options for afforestation or replacement of cleared forest have been exhausted, and certain restrictions apply. The fee is assessed at a rate of \$0.90 per square foot of the conservation requirement within a Priority Funding Area and at a rate of \$1.08 per square foot outside of a Priority Funding Area. Priority Funding Areas are areas toward which State investment is targeted under State law to support future growth.

**Local Revenues:** Prince George's County revenues may decrease to the extent the bill reduces the amount of fee-in-lieu payments deposited in the Woodland Conservation Fund. Inclusion of forested area in the 100-year floodplain within the net tract area for a given development, if afforestation or reforestation is proposed in or adjacent to the 100-year floodplain, should reduce the conservation requirements for the site, since the percentage of the net tract area that is forested is increased. The magnitude of any decrease in Woodland Conservation Fund revenues cannot be reliably estimated, but presumably it is at most only some portion of overall, ongoing fee-in-lieu revenues received by the county. Because fee-in-lieu payments are the last option for compliance with conservation requirements, the bill may have minimal or no impact on fee-in-lieu revenues in most fiscal years.

Local governments report information on their local forest conservation programs to DNR each year. In the three most recent fiscal years for which DNR has received fee-in-lieu revenue information from Prince George's County, the county's fee-in-lieu revenues were \$138,562 in fiscal 2011, \$10,324 in fiscal 2012, and \$652,093 in fiscal 2014.

**Small Business Effect:** To the extent the bill reduces conservation requirements applicable to certain developments in Prince George's County, small business developers may meaningfully benefit, while small businesses that provide services for compliance with conservation requirements may be negatively impacted.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Maryland Department of Planning, Department of Legislative Services

**Fiscal Note History:** First Reader - March 29, 2016  
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