
By: Delegate Guns

Introduced and read first time: February 12, 1996
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Forest Conservation**

3 FOR the purpose of enacting certain changes to the Forest Conservation Act of 1991;
4 providing for the extension of certain protection measures to certain sites; altering
5 certain requirements and procedures for forest stand delineations; altering the
6 preferred sequence and standards for afforestation and reforestation for certain
7 purposes; repealing a certain deadline on a municipality's assignment of a certain
8 obligation; authorizing the banking of forest resources as a mitigation technique in
9 certain circumstances; altering certain procedures and authorizing certain
10 alternative mitigation measures for certain classes of development; repealing certain
11 exclusions of certain areas from forest conservation calculations and requirements;
12 authorizing the Department of Natural Resources to recover certain costs in certain
13 circumstances; requiring the Department to adopt certain regulations; altering
14 certain periods for repayment of certain funds; authorizing certain local
15 jurisdictions to develop certain additional provisions for forest mitigation banking;
16 defining certain terms; making stylistic changes; and generally relating to forest
17 conservation.

18 BY renumbering

19 Article - Natural Resources
20 Section 5-1601(o) through (ll), respectively
21 to be Section 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd),
22 (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively
23 Annotated Code of Maryland
24 (1989 Replacement Volume and 1995 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article - Natural Resources
27 Section 5-103(a)(5), (c)(2) and (4), (d)(1), and (e)(2)(i), 5-1602(b)(7), 5-1603(a)(4)
28 and (g), 5-1604, 5-1607(a), (b), (c), and (d), 5-1610(d), (e), (h), and (i), and
29 5-1613
30 Annotated Code of Maryland
31 (1989 Replacement Volume and 1995 Supplement)

32 BY repealing and reenacting, with amendments,

2

1 Article - Natural Resources
2 Section 5-1601(z) and (ff)
3 Annotated Code of Maryland
4 (1989 Replacement Volume and 1995 Supplement)
5 (As enacted by Section 1 of this Act)

6 BY adding to

7 Article - Natural Resources
8 Section 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and 5-1610.1
9 Annotated Code of Maryland
10 (1989 Replacement Volume and 1995 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That Section(s) 5-1601(o) through (ll), respectively, of Article - Natural
13 Resources of the Annotated Code of Maryland be renumbered to be Section(s)
14 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg),
15 (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
17 read as follows:

18 **Article - Natural Resources**

19 5-103.

20 (a) (5) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL
21 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE
22 PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS WITH
23 ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE ACTIVITIES. FOREST
24 MITIGATION BANKING UNDER THIS SECTION SHALL BE CONDUCTED IN
25 ACCORDANCE WITH STANDARDS ADOPTED UNDER SUBTITLE 16 OF THIS TITLE.

26 (6) "Watershed" means all lands lying within an area described as a
27 subbasin in water quality regulations adopted by the Department of the Environment.

28 (c) (2) (i) Except as provided in subparagraph (ii) OR (III) of this paragraph,
29 the reforestation projects shall be established on any public land within the county and
30 watershed in which construction activity by a unit of State or local government has caused
31 a loss of trees where the public entity that owns the land agrees to that use of the land.

32 (ii) If the reforestation project cannot be reasonably accomplished in
33 the county and watershed in which the construction activity is located, then the
34 reforestation shall occur in the county or watershed in the State in which the construction
35 activity is located, OR SHALL BE ACCOMPLISHED BY USE OF CREDITS IN A FOREST
36 MITIGATION BANK IN THE COUNTY AND WATERSHED IN WHICH THE
37 CONSTRUCTION ACTIVITY IS LOCATED.

38 (III) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY
39 ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION
40 ACTIVITY IS LOCATED, OR BY USE OF CREDITS IN THE COUNTY AND WATERSHED IN

3
1 WHICH THE CONSTRUCTION ACTIVITY IS LOCATED, THEN REFORESTATION MAY
2 OCCUR BY THE USE OF CREDITS IN A FOREST MITIGATION BANK IN THE COUNTY OR
3 WATERSHED IN WHICH THE CONSTRUCTION ACTIVITY IS LOCATED.

4 (4) Any land for a reforestation project shall be:

5 (i) If possible, on the site or in the project right-of-way being used for
6 the construction activity;

7 (ii) If sufficient area is not available at the site or within the project
8 right-of-way, on State-owned or other publicly owned land in the county and watershed
9 in which the construction activity is located; [or]

10 (iii) If the reforestation project cannot be reasonably accomplished in
11 the county and watershed in which the construction activity is located, on State-owned or
12 other publicly owned land in the county or watershed in the State in which the
13 construction activity is located; OR

14 (IV) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY
15 ACCOMPLISHED ON STATE-OWNED OR OTHER PUBLICLY OWNED LAND IN THE
16 COUNTY OR WATERSHED IN THE STATE IN WHICH THE CONSTRUCTION ACTIVITY IS
17 LOCATED, THEN REFORESTATION MAY BE ACCOMPLISHED THROUGH USE OF
18 FOREST MITIGATION BANK CREDITS IN THE WATERSHED IN WHICH THE
19 CONSTRUCTION ACTIVITY IS LOCATED.

20 (d) (1) If the constructing agency is unable to locate a sufficient amount of State
21 or other publicly owned land OR AVAILABLE FOREST MITIGATION BANK CREDITS to
22 comply with the requirements of subsection (c) of this section, the constructing agency
23 shall contribute money, at the rate of 10 cents per square foot of the area of required
24 planting, to a special fund to be maintained in the Department and to be known as the
25 Reforestation Fund.

26 (e) (2) (i) 1. Except as provided in item 2 of this subparagraph, the
27 Department shall use the Reforestation Fund solely to plant trees on State or other
28 publicly owned lands located in the county and watershed in which construction projects
29 giving rise to Fund contributions are located.

30 2. If reforestation cannot be reasonably accomplished in the
31 county and watershed in which the construction activity is located, then the Department
32 may use the Reforestation Fund to plant trees on State or other publicly owned lands
33 located in the county or in the watershed in the State in which the construction activity is
34 located, OR TO PURCHASE CREDITS IN, ESTABLISH, OR MAINTAIN A FOREST
35 MITIGATION BANK IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION
36 ACTIVITY IS LOCATED IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT.

37 5-1601.

38 (O) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL
39 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE
40 PURPOSE OF PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION
41 REQUIREMENTS WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE
42 ACTIVITIES.

1 (T) "LINEAR PROJECT" MEANS A PROJECT WHOSE CONFIGURATION IS
2 ELONGATED WITH NEARLY PARALLEL SIDES AND USED TO TRANSPORT A UTILITY
3 PRODUCT OR PUBLIC SERVICE NOT OTHERWISE CONTAINED IN AN APPLICATION
4 FOR SUBDIVISION, SUCH AS ELECTRICITY, GAS, WATER, SEWER, COMMUNICATIONS,
5 TRAINS, AND VEHICLES. LINEAR PROJECTS MAY TRAVERSE FEE SIMPLE PROPERTIES
6 THROUGH DEFINED BOUNDARIES OR THROUGH EASEMENT RIGHTS.

7 (z) "Net tract area" means:

8 (1) Except in agriculture and resource areas OR LINEAR PROJECT AREAS,
9 the total area of a site, including both forested and nonforested areas, to the nearest
10 one-tenth acre[, reduced by the area found to be within the boundaries of the 100-year
11 floodplain]; and

12 (2) In agriculture and resource areas, the portion of the total tract for which
13 land use will be changed or will no longer be used for primarily agricultural activities[,
14 reduced by the area found to be within the boundaries of the 100-year floodplain].

15 (3) FOR A LINEAR PROJECT:

16 (I) THE AREA OF A RIGHT-OF-WAY WIDTH, NEW ACCESS ROADS
17 AND STORAGE; OR

18 (II) THE LIMITS OF DISTURBANCE AS SHOWN ON AN APPLICATION
19 FOR SEDIMENT AND EROSION CONTROL APPROVAL OR IN A CAPITAL
20 IMPROVEMENTS PROGRAM PROJECT DESCRIPTION.

21 (ff) (1) "Reforestation" or "reforested" means the creation of a biological
22 community dominated by trees and other woody plants containing at least 100 trees per
23 acre with at least 50% of those trees having the potential of attaining a 2 inch or greater
24 diameter measured at 4.5 feet above the ground, within 7 years.

25 (2) "Reforestation" includes landscaping of areas under an approved
26 landscaping plan that establishes a forest that is at least 35 feet wide and covering 2,500
27 square feet of area.

28 (3) "REFORESTATION" FOR A LINEAR PROJECT WHICH INVOLVES
29 OVERHEAD TRANSMISSION LINES MAY CONSIST OF A BIOLOGICAL COMMUNITY
30 DOMINATED BY TREES AND WOODY SHRUBS WITH NO MINIMUM HEIGHT OR
31 DIAMETER CRITERIA.

32 5-1602.

33 (b) The provisions of this subtitle do not apply to:

34 (7) Any activity conducted on a single lot of any size OR A LINEAR
35 PROJECT provided that:

36 (i) The activity does not result in the cutting, clearing, or grading of
37 more than 40,000 square feet of forest; and

38 (ii) The activity on the lot OR LINEAR PROJECT will not result in the
39 cutting, clearing, or grading of any forest that is subject to the requirements of a previous
40 forest conservation plan prepared under this subtitle;

1 (C) FOR AN APPLICATION FOR SUBDIVISION OR SEDIMENT AND EROSION
2 CONTROL OR GRADING FOR A SITE WITH MORE THAN 50% OF THE NET TRACT AREA
3 GOVERNED BY TITLE 8, SUBTITLE 18 OF THIS ARTICLE, THE DEPARTMENT OR LOCAL
4 AUTHORITY MAY ALLOW AN APPLICANT TO EXTEND CRITICAL AREA FOREST
5 PROTECTION MEASURES IN LIEU OF MEETING THE REQUIREMENTS OF THIS
6 SUBTITLE.

7 5-1603.

8 (a) (4) A municipality which has planning and zoning authority may, with the
9 concurrence of the county and the Department, assign its obligations under this subtitle
10 to the county [by December 31, 1991].

11 (g) A local authority OR THE DEPARTMENT IN ITS ADMINISTRATION OF A
12 STATE FOREST CONSERVATION PROGRAM IN JURISDICTIONS WHICH DO NOT HAVE
13 AN APPROVED LOCAL PROGRAM IN EFFECT may establish reasonable and appropriate
14 procedures for the recovery of all costs incurred in the development, implementation,
15 administration, and enforcement of the local FOREST CONSERVATION PROGRAM OR
16 THE STATE forest conservation program FOR JURISDICTIONS WITHOUT AN APPROVED
17 FOREST CONSERVATION PROGRAM.

18 5-1604.

19 (a) [After] EXCEPT AS PROVIDED IN SUBSECTION (B)(2) AND (3) OF THIS
20 SECTION, AFTER December 31, 1992, or after the date on which a local program has been
21 adopted under § 5-1603 of this subtitle, whichever occurs first, a person making
22 application for subdivision or grading or sediment control permits on areas greater than
23 40,000 square feet shall submit a forest stand delineation for the entire site prepared by
24 a licensed forester, licensed landscape architect, or other qualified professionals that may
25 be approved by the State or a local authority in the manner required by the approved
26 program.

27 (b) (1) The forest stand delineation shall be used during the preliminary review
28 process to determine the most suitable and practical areas for forest [conservation and,]
29 CONSERVATION. SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AND
30 except when waived by the Department during approval or review of a local program,
31 THE FOREST STAND DELINEATION shall contain the following components:

32 [(1)] (I) A topographic map delineating intermittent and perennial streams,
33 and steep slopes over 25%;

34 [(2)] (II) A soils map delineating soils with structural limitations, hydric
35 soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more;

36 [(3)] (III) Forest stand maps indicating species, location, and size of trees
37 and showing dominant and codominant forest types; and

38 [(4)] (IV) Any other requirements necessary to carry out the purposes of this
39 subtitle established in regulations adopted by the Department or imposed by a local
40 authority.

41 (2) A CONCEPT PLAT OR PLAN, PRELIMINARY PLAT OR PLAN, SEDIMENT
42 AND EROSION CONTROL PLAN, SITE PLAN, OR OTHER APPROPRIATE DOCUMENT,

6

1 VERIFIED BY A SITE VISIT IF APPROPRIATE, MAY SUBSTITUTE FOR THE FOREST
2 STAND DELINEATION REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION IF:

3 (I) THERE IS NO FOREST ON THE SITE; OR

4 (II) NO FOREST ON THE SITE IS TO BE CUT, CLEARED, OR GRADED
5 FOR THE PROPOSED USE, AND ALL FOREST ON THE SITE IS TO BE SUBJECT TO A
6 LONG-TERM PROTECTIVE AGREEMENT.

7 (3) THE DEPARTMENT SHALL PROVIDE FOR, AND A LOCAL AUTHORITY
8 MAY ADOPT, A SIMPLIFIED PROCESS OR PROCESSES FOR FOREST STAND
9 DELINEATION UNDER THIS SECTION, INCLUDING:

10 (I) LIMITING REQUIRED FOREST SAMPLING TO AREAS NOT
11 PROPOSED FOR PROTECTION UNDER LONG-TERM PROTECTIVE AGREEMENTS; AND

12 (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING
13 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST
14 RETENTION AREAS IS CONTEMPLATED.

15 (c) Within 30 days from receipt of the forest stand delineation, the Department or
16 local authority shall notify the applicant whether the forest stand delineation is complete
17 and correct. If the Department or local authority fails to notify the applicant about the
18 delineation within 30 days, the delineation shall be treated as complete and correct. The
19 Department or local authority may require further information or provide for an
20 extension of this deadline for an additional 15 days for extenuating circumstances.

21 5-1606.

22 (a) (5) LINEAR PROJECTS THAT INVOLVE NO CHANGE IN LAND USE MAY
23 NOT BE SUBJECT TO AFFORESTATION REQUIREMENTS.

24 5-1607.

25 (a) [The preferred sequence for afforestation and reforestation as determined by
26 the State or local authority, after techniques for retaining existing forest on the site have
27 been exhausted, is as follows:

28 (1) Selective clearing and supplemental planting on-site;

29 (2) On-site afforestation or reforestation, if economically feasible, using
30 transplanted or nursery stock that is greater than 1.5 inches diameter measured at 4.5 feet
31 above the ground;

32 (3) On-site afforestation or reforestation using whip and seedling stock;

33 (4) Landscaping of areas under an approved landscaping plan that
34 establishes a forest at least 35 feet wide and covering 2,500 square feet of area;

35 (5) Off-site afforestation or reforestation using transplanted or nursery
36 stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground;

37 (6) Off-site afforestation or reforestation using whip and seedling stock;

38 (7) Natural regeneration on-site; and

7

1 (8) Natural regeneration off-site.

2 (b) (1) A sequence other than the one described in subsection (a) of this section
3 may be used for a specific project if necessary to achieve the objectives of a local
4 jurisdiction's land use plans or policies or to take advantage of opportunities to
5 consolidate forest conservation efforts.

6 (2) In a municipal corporation with a tree management plan, in an existing
7 population center designated in a county master plan that has been adopted to conform
8 with the Economic Growth, Resource Protection, and Planning Act of 1992, as enacted by
9 Chapter 437 of the Acts of the General Assembly of 1992, or in any other designated area
10 approved by the Department as part of a local program, a local program may, subject to
11 the approval of the Department, establish criteria for the use of:

12 (i) Street trees as a permissible step in the priority sequence for
13 afforestation or reforestation and, based on a mature canopy coverage, may grant full
14 credit as a mitigation technique; and

15 (ii) The acquisition of an off-site protective easement for existing
16 forested areas not currently protected as a mitigation technique, but the afforestation or
17 reforestation credit granted may not exceed 50% of the area of the forest cover
18 protected.] THE PREFERRED SEQUENCE FOR AFFORESTATION AND
19 REFORESTATION SHALL BE ESTABLISHED BY THE STATE OR LOCAL AUTHORITY IN
20 ACCORDANCE WITH THE FOLLOWING AFTER ALL TECHNIQUES FOR RETAINING
21 EXISTING FOREST COVER ON-SITE HAVE BEEN EXHAUSTED:

22 (1) THOSE TECHNIQUES THAT ENHANCE EXISTING FOREST AND
23 INVOLVE SELECTIVE CLEARING OR SUPPLEMENTAL PLANTING ON-SITE;

24 (2) ON-SITE AFFORESTATION OR REFORESTATION MAY BE UTILIZED
25 WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED. IN THOSE CASES, THE
26 METHOD SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS
27 SECTION, AND THE LOCATION SHALL BE SELECTED IN ACCORDANCE WITH
28 SUBSECTION (D) OF THIS SECTION;

29 (3) (I) OFF-SITE AFFORESTATION OR REFORESTATION IN THE SAME
30 WATERSHED OR IN ACCORDANCE WITH AN APPROVED MASTER PLAN MAY BE
31 UTILIZED WHERE THE APPLICANT HAS DEMONSTRATED THAT NO REASONABLE
32 ON-SITE ALTERNATIVE EXISTS, OR WHERE:

33 1. ANY ON-SITE PRIORITY AREAS FOR AFFORESTATION OR
34 REFORESTATION HAVE BEEN PLANTED IN ACCORDANCE WITH SUBSECTION (D) OF
35 THIS SECTION; AND

36 2. THE APPLICANT HAS JUSTIFIED TO THE SATISFACTION OF
37 THE STATE OR LOCAL JURISDICTION THAT ENVIRONMENTAL BENEFITS
38 ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION WOULD EXCEED
39 THOSE DERIVED FROM ON-SITE PLANTING;

40 (II) IN THESE CASES, THE METHOD SHALL BE SELECTED IN
41 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AND THE LOCATION SHALL
42 BE SELECTED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION; AND

1 (III) OFF-SITE AFFORESTATION OR REFORESTATION MAY INCLUDE
2 THE USE OF FOREST MITIGATION BANKS WHICH HAVE BEEN SO DESIGNATED IN
3 ADVANCE BY THE STATE OR LOCAL FOREST CONSERVATION PROGRAM WHICH IS
4 APPROVED BY THE DEPARTMENT; AND

5 (4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE
6 SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES
7 OF A LOCAL JURISDICTION'S LAND USE PLANS OR POLICIES OR TO TAKE
8 ADVANTAGE OF OPPORTUNITIES TO CONSOLIDATE FOREST CONSERVATION
9 EFFORTS.

10 (B) STANDARDS FOR MEETING AFFORESTATION OR REFORESTATION
11 REQUIREMENTS SHALL BE ESTABLISHED BY THE STATE OR LOCAL PROGRAM USING
12 ONE OR MORE OF THE FOLLOWING METHODS:

13 (1) FOREST CREATION IN ACCORDANCE WITH A FOREST
14 CONSERVATION PLAN USING ONE OR MORE OF THE FOLLOWING:

15 (I) TRANSPLANTED OR NURSERY STOCK;

16 (II) WHIP AND SEEDLING STOCK; OR

17 (III) NATURAL REGENERATION WHERE IT CAN BE SHOWN TO
18 ADEQUATELY MEET THE OBJECTIVE OF THE FOREST CONSERVATION PLAN;

19 (2) THE USE OF STREET TREES IN A MUNICIPAL CORPORATION WITH A
20 TREE MANAGEMENT PLAN, IN AN EXISTING POPULATION CENTER DESIGNATED IN A
21 COUNTY MASTER PLAN THAT HAS BEEN ADOPTED TO CONFORM WITH THE
22 ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING ACT OF 1992, OR IN
23 ANY OTHER DESIGNATED AREA APPROVED BY THE DEPARTMENT AS PART OF A
24 LOCAL PROGRAM, UNDER CRITERIA ESTABLISHED BY THE LOCAL PROGRAM,
25 SUBJECT TO THE APPROVAL OF THE DEPARTMENT, USING:

26 (I) STREET TREES AS A PERMISSIBLE STEP IN THE PRIORITY
27 SEQUENCE FOR AFFORESTATION OR REFORESTATION AND, BASED ON A MATURE
28 CANOPY COVERAGE, MAY GRANT FULL CREDIT AS A MITIGATION TECHNIQUE; AND

29 (II) ACQUISITION AS A MITIGATION TECHNIQUE OF AN OFF-SITE
30 PROTECTIVE EASEMENT FOR EXISTING FORESTED AREAS NOT CURRENTLY
31 PROTECTED, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT
32 GRANTED MAY NOT EXCEED 50% OF THE AREA OF FOREST COVER PROTECTED; OR

33 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE
34 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED
35 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST
36 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

37 (c) The following trees, shrubs, plants, and specific areas shall be considered
38 priority for retention and protection, and they shall be left in an undisturbed condition
39 unless the applicant has demonstrated, to the satisfaction of the State or local authority
40 that reasonable efforts have been made to protect them and the plan cannot [be]
41 reasonably BE altered:

1 (1) Trees, shrubs, and plants located in sensitive areas including 100-year
2 floodplains, intermittent and perennial streams and their buffers, COASTAL BAYS AND
3 THEIR BUFFERS, steep slopes, and critical habitats;

4 (2) Contiguous forest that connects the largest undeveloped or most
5 vegetated tracts of land within and adjacent to the site;

6 (3) Trees, shrubs, or plants identified on the list of rare, threatened, and
7 endangered species of the U.S. Fish and Wildlife Service or the Department;

8 (4) Trees that are part of a historic site or associated with a historic
9 structure or designated by the Department or local authority as a national, State, or local
10 Champion Tree; and

11 (5) Trees having a diameter measured at 4.5 feet above the ground of:

12 (i) 30 inches; or

13 (ii) 75% of the diameter, measured at 4.5 feet above the ground, of the
14 current State Champion Tree of that species as designated by the Department.

15 (d) The following shall be considered priority for afforestation or reforestation:

16 (1) Establish or enhance forest buffers adjacent to intermittent and
17 perennial streams AND COASTAL BAYS to widths of at least 50 feet;

18 (2) Establish or increase existing forested corridors to connect existing
19 forests within or adjacent to the site and, where practical, forested corridors should be a
20 minimum of 300 feet in width to facilitate wildlife movement;

21 (3) Establish or enhance forest buffers adjacent to critical habitats where
22 appropriate;

23 (4) ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR
24 FLOODPLAINS;

25 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of
26 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or
27 other natural depressions;

28 [(5)] (6) Establish buffers adjacent to areas of differing landuse where
29 appropriate, or adjacent to highways or utility [right-of-ways] RIGHTS OF WAY;

30 [(6)] (7) Establish forest areas adjacent to existing forests so as to increase
31 the overall area of contiguous forest cover, when appropriate; and

32 [(7)] (8) Use native plant materials for afforestation or reforestation, when
33 appropriate.

34 5-1610.

35 (d) (1) The Department shall accomplish the reforestation or afforestation for
36 which the money is deposited within [1 year or 2 growing seasons] 2 YEARS OR 3
37 GROWING SEASONS, as appropriate, after receipt of the money.

10

1 (2) Money deposited in the Forest Conservation Fund under subsection (b)
2 of this section shall remain in the Fund for a period of [1 year or 2 growing seasons] 2
3 YEARS OR 3 GROWING SEASONS, and at the end of that time period, any portion that
4 has not been used to meet the afforestation or reforestation requirements shall be
5 returned to the person who provided the money.

6 (e) (1) Money deposited in the Fund under subsection (b) of this section may
7 only be spent on reforestation and afforestation, including site identification, acquisition,
8 and preparation, and may not revert to the General Fund of the State.

9 (2) (i) Except as provided in subparagraph (ii) OR (III) of this paragraph,
10 the reforestation or afforestation requirement under this subsection shall occur in the
11 county and watershed in which the project is located.

12 (ii) If the reforestation or afforestation cannot be reasonably
13 accomplished in the county and watershed in which the project is located, then the
14 reforestation or afforestation shall occur in the county or watershed in the [state] STATE
15 in which the project is located.

16 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE
17 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE
18 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE
19 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN OR ESTABLISHMENT OR
20 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH
21 REGULATIONS OF THE DEPARTMENT.

22 (h) Money deposited in the local forest conservation fund under subsection (g) of
23 this section shall remain in the fund for a period of [1 year or 2 growing seasons] 2
24 YEARS OR 3 GROWING SEASONS. At the end of that time period, any portion that has
25 not been used to meet the afforestation or reforestation requirements shall be returned to
26 the person who provided the money.

27 (i) (1) Money deposited in the local forest conservation fund under subsection
28 (g) of this section may only be spent on reforestation and afforestation, including the
29 costs directly related to site identification, acquisition, prepurchase, and preparation, and
30 may not revert to any other local general fund.

31 (2) (i) Except as provided in subparagraph (ii) OR (III) of this paragraph,
32 the reforestation or afforestation requirement under this subsection shall occur in the
33 county and watershed in which the project is located.

34 (ii) If the reforestation or afforestation cannot be reasonably
35 accomplished in the county and watershed in which the project is located, then the
36 reforestation or afforestation shall occur in the county or watershed in the [state] STATE
37 in which the project is located.

38 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE
39 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE
40 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE
41 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN OR ESTABLISHMENT OR
42 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH
43 REGULATIONS OF THE LOCAL FOREST CONSERVATION PROGRAM.

11

1 5-1610.1.

2 (A) THE DEPARTMENT SHALL DEVELOP STANDARDS AND ADOPT
3 REGULATIONS FOR THE CREATION AND USE OF FOREST MITIGATION BANKS,
4 INCLUDING CRITERIA FOR TRACKING, CREDITING, MAINTAINING, BONDING, AND
5 REPORTING MITIGATION BANK ACTIVITIES.

6 (B) A LOCAL JURISDICTION MAY DEVELOP PROCEDURES FOR ESTABLISHING
7 FOREST MITIGATION BANKS AS PART OF ITS FOREST CONSERVATION PROGRAM.

8 (C) MITIGATION BANKS MAY BE PERMITTED ONLY IN PRIORITY AREAS AS
9 IDENTIFIED IN § 5-1607(D) OF THIS SUBTITLE OR AS IDENTIFIED IN A
10 COMPREHENSIVE PLAN ADOPTED BY A LOCAL JURISDICTION.

11 (D) THE ESTABLISHMENT OF MITIGATION BANKS AND THEIR USE MAY NOT
12 ALTER THE SEQUENCE FOR RETENTION, REFORESTATION, OR AFFORESTATION ON
13 A DEVELOPMENT SITE AS OUTLINED IN § 5-1607 OF THIS SUBTITLE.

14 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE
15 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE LONG-TERM
16 PROTECTION AND CONSERVATION OF FOREST MITIGATION BANKS BY
17 CONSERVATION EASEMENTS.

18 (F) THIS SECTION MAY NOT BE CONSTRUED TO REQUIRE THE DEPARTMENT
19 OR A LOCAL JURISDICTION TO:

20 (1) ESTABLISH OR FUND STATE OR LOCAL MITIGATION BANKS;

21 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY
22 THE PRIVATE SECTOR; OR

23 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST
24 MITIGATION BANKING.

25 5-1613.

26 On or before July 1 of each year, the Department shall submit, subject to § 2-1312
27 of the State Government Article, to the Senate Economic and Environmental Affairs
28 Committee and the House Environmental Matters Committee a statewide report,
29 compiled from local authorities' reports to the Department, on:

30 (1) The number, location, and type of projects subject to the provisions of
31 this subtitle;

32 (2) The amount and location of acres cleared, conserved, and planted,
33 INCLUDING ANY AREAS WHICH UTILIZE FOREST MITIGATION BANK CREDITS, in
34 connection with a development project;

35 (3) The amount of reforestation and afforestation fees and noncompliance
36 penalties collected and expended; [and]

37 (4) The costs of implementing the forest conservation program; AND

12

1 (5) THE SIZE, LOCATION, AND PROTECTION OF ANY LOCAL FOREST
2 MITIGATION BANKS WHICH ARE CREATED UNDER A LOCAL OR STATE PROGRAM.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 1996.