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**By: Delegate Guns**

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

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 25, 1996

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CHAPTER \_\_\_\_

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 reforestationfor 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~~  
11 altering certain exclusions of certain areas from forest conservation calculations and  
12 requirements; authorizing the Department of Natural Resources to recover certain  
13 costs in certain circumstances; requiring the Department to adopt certain  
14 regulations; altering certain periods for repayment of certain funds; authorizing  
15 certain local jurisdictions to develop certain additional provisionsfor forest  
16 mitigation banking; defining certain terms; making stylistic changes; and generally  
17 relating to forest 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

2  
1 Section 5-103(a)(5), (c)(2) and (4), (d)(1), and (e)(2)(i), 5-1602(b)(7), 5-1603(a)(4)  
2 and (g), 5-1604, 5-1607(a), (b), (c), and (d), 5-1610(d), (e), (h), and (i), and  
3 5-1613  
4 Annotated Code of Maryland  
5 (1989 Replacement Volume and 1995 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article - Natural Resources  
8 Section 5-1601(z) and (ff)  
9 Annotated Code of Maryland  
10 (1989 Replacement Volume and 1995 Supplement)  
11 (As enacted by Section 1 of this Act)

12 BY adding to  
13 Article - Natural Resources  
14 Section 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and 5-1610.1  
15 Annotated Code of Maryland  
16 (1989 Replacement Volume and 1995 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That Section(s) 5-1601(o) through (ll), respectively, of Article - Natural  
19 Resources of the Annotated Code of Maryland be renumbered to be Section(s)  
20 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg),  
21 (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively.

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

24 **Article - Natural Resources**

25 5-103.

26 (a) (5) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL  
27 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE  
28 PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS WITH  
29 ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE ACTIVITIES. FOREST  
30 MITIGATION BANKING UNDER THIS SECTION SHALL BE CONDUCTED IN  
31 ACCORDANCE WITH STANDARDS ADOPTED UNDER SUBTITLE 16 OF THIS TITLE.

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

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

38 (ii) If the reforestation project cannot be reasonably accomplished in  
39 the county and watershed in which the construction activity is located, then the  
40 reforestation shall occur in the county or watershed in the State in which the construction

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1 activity is located, OR SHALL BE ACCOMPLISHED BY USE OF CREDITS IN A FOREST  
2 MITIGATION BANK IN THE COUNTY AND WATERSHED IN WHICH THE  
3 CONSTRUCTION ACTIVITY IS LOCATED.

4 (III) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY  
5 ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION  
6 ACTIVITY IS LOCATED, OR BY USE OF CREDITS IN THE COUNTY AND WATERSHED IN  
7 WHICH THE CONSTRUCTION ACTIVITY IS LOCATED, THEN REFORESTATION MAY  
8 OCCUR BY THE USE OF CREDITS IN A FOREST MITIGATION BANK IN THE COUNTY OR  
9 WATERSHED IN WHICH THE CONSTRUCTION ACTIVITY IS LOCATED.

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

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

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

16 (iii) If the reforestation project cannot be reasonably accomplished in  
17 the county and watershed in which the construction activity is located, on State-owned or  
18 other publicly owned land in the county or watershed in the State in which the  
19 construction activity is located; OR

20 (IV) IF THE REFORESTATION PROJECT CANNOT BE REASONABLY  
21 ACCOMPLISHED ON STATE-OWNED OR OTHER PUBLICLY OWNED LAND IN THE  
22 COUNTY OR WATERSHED IN THE STATE IN WHICH THE CONSTRUCTION ACTIVITY IS  
23 LOCATED, THEN REFORESTATION MAY BE ACCOMPLISHED THROUGH USE OF  
24 FOREST MITIGATION BANK CREDITS IN THE WATERSHED IN WHICH THE  
25 CONSTRUCTION ACTIVITY IS LOCATED.

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

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

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

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1 5-1601.

2 (O) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL  
3 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE  
4 PURPOSE OF PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION  
5 REQUIREMENTS WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE  
6 ACTIVITIES.

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

13 (z) "Net tract area" means:

14 (1) Except in agriculture and resource areas OR LINEAR PROJECT AREAS,  
15 the total area of a site, including both forested and nonforested areas, to the nearest  
16 one-tenth acre[, reduced by the area found to be within the boundaries of the 100-year  
17 floodplain], REDUCED BY THE AREA OF THE TRACT IN WHICH FOREST CLEARING IS  
18 RESTRICTED BY ANOTHER LOCAL ORDINANCE OR PROGRAM; and

19 (2) In agriculture and resource areas, the portion of the total tract for which  
20 land use will be changed or will no longer be used for primarily agricultural activities[,  
21 reduced by the area found to be within the boundaries of the 100-year floodplain] ,  
22 REDUCED BY THE AREA OF THE TRACT IN WHICH FOREST CLEARING IS  
23 RESTRICTED BY ANOTHER LOCAL ORDINANCE OR PROGRAM.

24 (3) FOR A LINEAR PROJECT:

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

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

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

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

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

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1 5-1602.

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

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

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

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

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

16 5-1603.

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

20 (g) A local authority OR THE DEPARTMENT IN ITS ADMINISTRATION OF A  
21 STATE FOREST CONSERVATION PROGRAM IN JURISDICTIONS WHICH DO NOT HAVE  
22 AN APPROVED LOCAL PROGRAM IN EFFECT may establish reasonable and appropriate  
23 procedures for the recovery of all costs incurred in the development, implementation,  
24 administration, and enforcement of the local FOREST CONSERVATION PROGRAM OR  
25 THE STATE forest conservation program FOR JURISDICTIONS WITHOUT AN APPROVED  
26 FOREST CONSERVATION PROGRAM.

27 5-1604.

28 (a) [After] EXCEPT AS PROVIDED IN SUBSECTION (B)(2) AND (3) OF THIS  
29 SECTION, AFTER December 31, 1992, or after the date on which a local program has been  
30 adopted under § 5-1603 of this subtitle, whichever occurs first, a person making  
31 application for subdivision or grading or sediment control permits on areas greater than  
32 40,000 square feet shall submit a forest stand delineation for the entire site prepared by  
33 a licensed forester, licensed landscape architect, or other qualified professionals that may  
34 be approved by the State or a local authority in the manner required by the approved  
35 program.

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

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

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

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

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

10                    (2) A CONCEPT PLAT OR PLAN, PRELIMINARY PLAT OR PLAN, SEDIMENT  
11 AND EROSION CONTROL PLAN, SITE PLAN, OR OTHER APPROPRIATE DOCUMENT,  
12 VERIFIED BY A SITE VISIT IF APPROPRIATE, MAY SUBSTITUTE FOR THE FOREST  
13 STAND DELINEATION REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION IF:

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

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

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

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

23                    (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING  
24 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST  
25 RETENTION AREAS IS CONTEMPLATED.

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

32 5-1606.

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

35 5-1607.

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

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

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

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

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

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

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

10 (7) Natural regeneration on-site; and

11 (8) Natural regeneration off-site.

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

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

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

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

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

34 (2) ON-SITE AFFORESTATION OR REFORESTATION MAY BE UTILIZED  
35 WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED. IN THOSE CASES, THE  
36 METHOD SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS  
37 SECTION, AND THE LOCATION SHALL BE SELECTED IN ACCORDANCE WITH  
38 SUBSECTION (D) OF THIS SECTION;

39 (3) (I) OFF-SITE AFFORESTATION OR REFORESTATION IN THE SAME  
40 WATERSHED OR IN ACCORDANCE WITH AN APPROVED MASTER PLAN MAY BE

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1 UTILIZED WHERE THE APPLICANT HAS DEMONSTRATED THAT NO REASONABLE  
2 ON-SITE ALTERNATIVE EXISTS, OR WHERE:

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

6 2. THE APPLICANT HAS JUSTIFIED TO THE SATISFACTION OF  
7 THE STATE OR LOCAL JURISDICTION THAT ENVIRONMENTAL BENEFITS  
8 ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION WOULD EXCEED  
9 THOSE DERIVED FROM ON-SITE PLANTING;

10 (II) IN THESE CASES, THE METHOD SHALL BE SELECTED IN  
11 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AND THE LOCATION SHALL  
12 BE SELECTED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION; AND

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

17 (4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE  
18 SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES  
19 OF A LOCAL JURISDICTION'S LAND USE PLANS OR POLICIES OR TO TAKE  
20 ADVANTAGE OF OPPORTUNITIES TO CONSOLIDATE FOREST CONSERVATION  
21 EFFORTS.

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

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

27 (I) TRANSPLANTED OR NURSERY STOCK;

28 (II) WHIP AND SEEDLING STOCK; OR

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

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

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

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

5 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE  
6 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED  
7 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST  
8 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

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

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

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

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

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

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

25 (i) 30 inches; or

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

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

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

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

34 (3) Establish or enhance forest buffers adjacent to critical habitats where  
35 appropriate;

36 (4) ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR  
37 FLOODPLAINS;

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1 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of  
2 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or  
3 other natural depressions;

4 [(5)] (6) Establish buffers adjacent to areas of differing landuse where  
5 appropriate, or adjacent to highways or utility [right-of-ways] RIGHTS OF WAY;

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

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

10 5-1610.

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

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

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

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

25 (ii) If the reforestation or afforestation cannot be reasonably  
26 accomplished in the county and watershed in which the project is located, then the  
27 reforestation or afforestation shall occur in the county or watershed in the [state] STATE  
28 in which the project is located.

29 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE  
30 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE  
31 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE  
32 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN OR ESTABLISHMENT OR  
33 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH  
34 REGULATIONS OF THE DEPARTMENT.

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

40 (i) (1) Money deposited in the local forest conservation fund under subsection  
41 (g) of this section may only be spent on reforestation and afforestation, including the

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1 costs directly related to site identification, acquisition, prepurchase, and preparation, and  
2 may not revert to any other local general fund.

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

6 (ii) If the reforestation or afforestation cannot be reasonably  
7 accomplished in the county and watershed in which the project is located, then the  
8 reforestation or afforestation shall occur in the county or watershed in the [state] STATE  
9 in which the project is located.

10 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE  
11 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE  
12 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE  
13 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN OR ESTABLISHMENT OR  
14 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH  
15 REGULATIONS OF THE LOCAL FOREST CONSERVATION PROGRAM.

16 5-1610.1.

17 (A) THE DEPARTMENT SHALL DEVELOP STANDARDS AND ADOPT  
18 REGULATIONS FOR THE CREATION AND USE OF FOREST MITIGATION BANKS,  
19 INCLUDING CRITERIA FOR TRACKING, CREDITING, MAINTAINING, BONDING, AND  
20 REPORTING MITIGATION BANK ACTIVITIES.

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

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

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

29 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE  
30 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE LONG-TERM  
31 PROTECTION AND CONSERVATION OF FOREST MITIGATION BANKS BY  
32 CONSERVATION EASEMENTS.

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

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

36 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY  
37 THE PRIVATE SECTOR; OR

38 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST  
39 MITIGATION BANKING.

12

1 5-1613.

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

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

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

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

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

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

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