

By: Senator Colburn

Requested: November 15, 1995

Introduced and read first time: January 10, 1996

Assigned to: Economic and Environmental Affairs

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; reinstating and extending the term of service of the Advisory
17 Group on Forest Conservation; and generally relating to forest conservation.

18 BY renumbering

19 Article - Natural Resources
20 Section 5-1601(o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc),
21 (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll), respectively
22 to be Section 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd),
23 (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively
24 Annotated Code of Maryland
25 (1989 Replacement Volume and 1995 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article - Natural Resources
28 Section 5-103(a)(5), (c)(2) and (4), (d)(1), and (e)(2)(i), 5-1602(b)(7), 5-1603(a)(4)
29 and (g), 5-1604, 5-1607(a), (b), (c), and (d), 5-1610(d), (e), (h), and (i), and
30 5-1613
31 Annotated Code of Maryland
32 (1989 Replacement Volume and 1995 Supplement)

2

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

7 BY adding to
8 Article - Natural Resources
9 Section 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and 5-1610.1
10 Annotated Code of Maryland
11 (1989 Replacement Volume and 1995 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That Section(s) 5-1601(o), (p), (q), (r), (s), (t), (u), (v),(w), (x), (y), (z),
14 (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll), respectively, of Article -
15 Natural Resources of the Annotated Code of Maryland be renumbered to beSection(s)
16 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg),
17 (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively.

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

20 **Article - Natural Resources**

21 5-103.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 5-1601.

41 (O) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL
42 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE

4

1 PURPOSE OF PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION
2 REQUIREMENTS WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE
3 ACTIVITIES.

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

10 (z) "Net tract area" means:

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

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

18 (3) FOR A LINEAR PROJECT:

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

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

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

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

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

35 5-1602.

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

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

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

5

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

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

10 5-1603.

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

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

21 5-1604.

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

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

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

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

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

6

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

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

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

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

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

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

17 (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING
18 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST
19 RETENTION AREAS IS CONTEMPLATED.

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

26 5-1606.

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

29 5-1607.

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

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

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

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

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

7

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

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

4 (7) Natural regeneration on-site; and

5 (8) Natural regeneration off-site.

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

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

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

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

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

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

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

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

40 2. THE APPLICANT HAS JUSTIFIED TO THE SATISFACTION OF
41 THE STATE OR LOCAL JURISDICTION THAT ENVIRONMENTAL BENEFITS

8

1 ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION WOULD EXCEED
2 THOSE DERIVED FROM ON-SITE PLANTING;

3 (II) IN THESE CASES, THE METHOD SHALL BE SELECTED IN
4 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AND THE LOCATION SHALL
5 BE SELECTED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION; AND

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

10 (4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE
11 SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES
12 OF A LOCAL JURISDICTION'S LAND USE PLANS OR POLICIES OR TO TAKE
13 ADVANTAGE OF OPPORTUNITIES TO CONSOLIDATE FOREST CONSERVATION
14 EFFORTS.

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

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

20 (I) TRANSPLANTED OR NURSERY STOCK;

21 (II) WHIP AND SEEDLING STOCK; OR

22 (III) NATURAL REGENERATION WHERE IT CAN BE SHOWN TO
23 ADEQUATELY MEET THE OBJECTIVE OF THE FOREST CONSERVATION PLAN.

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

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

34 (II) ACQUISITION AS A MITIGATION TECHNIQUE OF AN OFF-SITE
35 PROTECTIVE EASEMENT FOR EXISTING FORESTED AREAS NOT CURRENTLY
36 PROTECTED, IN WHICH CASE THE AFFORESTATION OR REFORESTATION CREDIT
37 GRANTED MAY NOT EXCEED 50% OF THE AREA OF FOREST COVER PROTECTED.

38 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE
39 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED
40 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST
41 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

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

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

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

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

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

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

17 (i) 30 inches; or

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

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

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

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

26 (3) Establish or enhance forest buffers adjacent to critical habitats where
27 appropriate;

28 (4) ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR
29 FLOODPLAINS;

30 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of
31 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or
32 other natural depressions;

33 [(5)] (6) Establish buffers adjacent to areas of differing land use where
34 appropriate, or adjacent to highways or utility right-of-ways;

35 [(6)] (7) Establish forest areas adjacent to existing forests so as to increase
36 the overall area of contiguous forest cover, when appropriate; and

37 [(7)] (8) Use native plant materials for afforestation or reforestation, when
38 appropriate.

10

1 5-1610.

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

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

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

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

16 (ii) If the reforestation or afforestation cannot be reasonably
17 accomplished in the county and watershed in which the project is located, then the
18 reforestation or afforestation shall occur in the county or watershed in the state in which
19 the project is located.

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

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

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

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

38 (ii) If the reforestation or afforestation cannot be reasonably
39 accomplished in the county and watershed in which the project is located, then the
40 reforestation or afforestation shall occur in the county or watershed in the state in which
41 the project is located.

11

1 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE
2 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE
3 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE
4 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR
5 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH
6 REGULATIONS OF THE LOCAL FOREST CONSERVATION PROGRAM.

7 5-1610.1.

8 (A) THE DEPARTMENT SHALL DEVELOP STANDARDS AND ADOPT
9 REGULATIONS FOR THE CREATION AND USE OF FOREST MITIGATION BANKS,
10 INCLUDING CRITERIA FOR TRACKING, CREDITING, MAINTAINING, BONDING, AND
11 REPORTING MITIGATION BANK ACTIVITIES.

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

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

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

20 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE
21 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE LONG-TERM
22 PROTECTION AND CONSERVATION OF FOREST MITIGATION BANKS BY
23 CONSERVATION EASEMENTS.

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

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

27 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY
28 THE PRIVATE SECTOR; OR

29 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST
30 MITIGATION BANKING.

31 5-1613.

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

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

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

12

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

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

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

6 SECTION 3. AND BE IT FURTHER ENACTED, That notwithstanding the
7 provisions of Section 2(2) of Chapter 489 of the Acts of the General Assembly of 1993,
8 the Advisory Group on Forest Conservation established under that Act shall be reinstated
9 and shall serve through May 31, 1999.

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