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(PRE-FILED)

HB 1275/95 - ENV

**By: ~~Senator Colburn~~ Senators Colburn and Derr**

Requested: November 15, 1995

Introduced and read first time: January 10, 1996

Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 20, 1996

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 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)

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

8 BY repealing and reenacting, with amendments,  
9 Article - Natural Resources  
10 Section 5-1601(z) and (ff)  
11 Annotated Code of Maryland  
12 (1989 Replacement Volume and 1995 Supplement)  
13 (As enacted by Section 1 of this Act)

14 BY adding to  
15 Article - Natural Resources  
16 Section 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and 5-1610.1  
17 Annotated Code of Maryland  
18 (1989 Replacement Volume and 1995 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That Section(s) 5-1601(o), (p), (q), (r), (s), (t), (u), (v),(w), (x), (y), (z),  
21 (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll), respectively, of Article -  
22 Natural Resources of the Annotated Code of Maryland be renumbered to beSection(s)  
23 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg),  
24 (hh), (ii), (jj), (kk), (ll), (mm), and (nn), respectively.

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

27 **Article - Natural Resources**

28 5-103.

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

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

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

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

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

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

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

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

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

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

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

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

39 2. If reforestation cannot be reasonably accomplished in the  
40 county and watershed in which the construction activity is located, then the Department  
41 may use the Reforestation Fund to plant trees on State or other publicly owned lands  
42 located in the county or in the watershed in the State in which the construction activity is  
43 located, OR TO PURCHASE CREDITS IN, ESTABLISH, OR MAINTAIN A FOREST

4  
1 MITIGATION BANK IN THE COUNTY OR WATERSHED IN WHICH THE CONSTRUCTION  
2 ACTIVITY IS LOCATED IN ACCORDANCE WITH REGULATIONS OF THE DEPARTMENT.  
3 THE REFORESTATION FUND MAY NOT BE USED TO FINANCE ADMINISTRATIVE  
4 ACTIVITIES ASSOCIATED WITH A MITIGATION BANK AND ANY CREDITS CREATED BY  
5 THE REFORESTATION FUND MAY NOT BE SOLD TO COMPENSATE FOR ADDITIONAL  
6 FOREST IMPACTS.

7 5-1601.

8 (O) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL  
9 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE  
10 PURPOSE OF PROVIDING CREDITS FOR AFFORESTATION OR REFORESTATION  
11 REQUIREMENTS WITH ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE  
12 ACTIVITIES.

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

19 (z) "Net tract area" means:

20 (1) Except in agriculture and resource areas OR LINEAR PROJECT AREAS,  
21 the total area of a site, including both forested and nonforested areas, to the nearest  
22 one-tenth acre[, reduced by the area found to be within the boundaries of the 100-year  
23 floodplain] REDUCED BY THAT AREA WHERE FOREST CLEARING IS RESTRICTED BY  
24 ANOTHER LOCAL ORDINANCE OR PROGRAM; and

25 (2) In agriculture and resource areas, the portion of the total tract for which  
26 land use will be changed or will no longer be used for primarily agricultural activities[,  
27 reduced by the area found to be within the boundaries of the 100-year floodplain]  
28 REDUCED BY THAT AREA WHERE FOREST CLEARING IS RESTRICTED BY ANOTHER  
29 LOCAL ORDINANCE OR PROGRAM.

30 (3) FOR A LINEAR PROJECT:

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

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

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

5

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

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

8 5-1602.

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

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

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

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

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

23 5-1603.

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

27 (g) A local authority OR THE DEPARTMENT IN ITS ADMINISTRATION OF A  
28 STATE FOREST CONSERVATION PROGRAM IN JURISDICTIONS WHICH DO NOT HAVE  
29 AN APPROVED LOCAL PROGRAM IN EFFECT may establish reasonable and appropriate  
30 procedures for the recovery of all costs incurred in the development, implementation,  
31 administration, and enforcement of the local FOREST CONSERVATION PROGRAM OR  
32 THE STATE forest conservation program FOR JURISDICTIONS WITHOUT AN APPROVED  
33 FOREST CONSERVATION PROGRAM.

34 5-1604.

35 (a) [After] EXCEPT AS PROVIDED IN SUBSECTION (B)(2) AND (3) OF THIS  
36 SECTION, AFTER December 31, 1992, or after the date on which a local program has been  
37 adopted under § 5-1603 of this subtitle, whichever occurs first, a person making  
38 application for subdivision or grading or sediment control permits on areas greater than  
39 40,000 square feet shall submit a forest stand delineation for the entire site prepared by  
40 a licensed forester, licensed landscape architect, or other qualified professionals that may

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1 be approved by the State or a local authority in the manner required by the approved  
2 program.

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

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

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

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

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

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

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

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

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

28 (I) LIMITING REQUIRED FOREST SAMPLING TO AREAS NOT  
29 PROPOSED FOR PROTECTION UNDER LONG-TERM PROTECTIVE AGREEMENTS AS  
30 LONG AS ALL PRIORITY AREAS ON THE SITE ARE IDENTIFIED AND PROTECTED; AND

31 (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING  
32 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST  
33 RETENTION AREAS IS CONTEMPLATED.

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

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1 5-1606.

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

4 5-1607.

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

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

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

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

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

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

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

18 (7) Natural regeneration on-site; and

19 (8) Natural regeneration off-site.

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

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

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

33 (ii) The acquisition of an off-site protective easement for existing  
34 forested areas not currently protected as a mitigation technique, but the afforestation or  
35 reforestation credit granted may not exceed 50% of the area of the forest cover  
36 protected.] THE PREFERRED SEQUENCE FOR AFFORESTATION AND

37 REFORESTATION SHALL BE ESTABLISHED BY THE STATE OR LOCAL AUTHORITY IN  
38 ACCORDANCE WITH THE FOLLOWING AFTER ALL TECHNIQUES FOR RETAINING  
39 EXISTING FOREST COVER ON-SITE HAVE BEEN EXHAUSTED:

8

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

3 (2) ON-SITE AFFORESTATION OR REFORESTATION MAY BE UTILIZED  
4 WHERE THE RETENTION OPTIONS HAVE BEEN EXHAUSTED. IN THOSE CASES, THE  
5 METHOD SHALL BE SELECTED IN ACCORDANCE WITH SUBSECTION (B) OF THIS  
6 SECTION, AND THE LOCATION SHALL BE SELECTED IN ACCORDANCE WITH  
7 SUBSECTION (D) OF THIS SECTION;

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

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

15 2. THE APPLICANT HAS JUSTIFIED TO THE SATISFACTION OF  
16 THE STATE OR LOCAL JURISDICTION THAT ENVIRONMENTAL BENEFITS  
17 ASSOCIATED WITH OFF-SITE AFFORESTATION OR REFORESTATION WOULD EXCEED  
18 THOSE DERIVED FROM ON-SITE PLANTING;

19 (II) IN THESE CASES, THE METHOD SHALL BE SELECTED IN  
20 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AND THE LOCATION SHALL  
21 BE SELECTED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION; AND

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

26 (4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE  
27 SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES  
28 OF A LOCAL JURISDICTION'S LAND USE PLANS OR POLICIES OR TO TAKE  
29 ADVANTAGE OF OPPORTUNITIES TO CONSOLIDATE FOREST CONSERVATION  
30 EFFORTS.

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

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

36 (I) TRANSPLANTED OR NURSERY STOCK;

37 (II) WHIP AND SEEDLING STOCK; OR

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



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

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

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

15 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE  
16 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED  
17 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST  
18 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

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

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

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

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

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

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

35 (i) 30 inches; or

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

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

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

10

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

4 (3) Establish or enhance forest buffers adjacent to critical habitats where  
5 appropriate;

6 (4) ESTABLISH OR ENHANCE FORESTED AREAS IN 100-YEAR  
7 FLOODPLAINS;

8 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of  
9 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or  
10 other natural depressions;

11 [(5)] (6) Establish buffers adjacent to areas of differing landuse where  
12 appropriate, or adjacent to highways or utility right-of-ways;

13 [(6)] (7) Establish forest areas adjacent to existing forests so as to increase  
14 the overall area of contiguous forest cover, when appropriate; and

15 [(7)] (8) Use native plant materials for afforestation or reforestation, when  
16 appropriate.

17 5-1610.

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

21 (2) Money deposited in the Forest Conservation Fund under subsection (b)  
22 of this section shall remain in the Fund for a period of [1 year or 2 growing seasons] 2  
23 YEARS OR 3 GROWING SEASONS, and at the end of that time period, any portion that  
24 has not been used to meet the afforestation or reforestation requirements shall be  
25 returned to the person who provided the money TO BE USED FOR DOCUMENTED  
26 ON-SITE TREE PLANTING BEYOND THAT REQUIRED BY THIS SUBTITLE OR OTHER  
27 APPLICABLE STATUTES.

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

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 in which  
37 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

11

1 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR  
2 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH  
3 REGULATIONS OF THE DEPARTMENT. THE REFORESTATION FUND MAY NOT BE  
4 USED TO FINANCE ADMINISTRATIVE ACTIVITIES ASSOCIATED WITH A MITIGATION  
5 BANK AND ANY CREDITS CREATED BY THE REFORESTATION FUND MAY NOT BE  
6 SOLD TO COMPENSATE FOR ADDITIONAL FOREST IMPACTS.

7 (h) Money deposited in the local forest conservation fund under subsection (g) of  
8 this section shall remain in the fund for a period of [1 year or 2 growing seasons] 2  
9 YEARS OR 3 GROWING SEASONS. At the end of that time period, any portion that has  
10 not been used to meet the afforestation or reforestation requirements shall be returned to  
11 the person who provided the money TO BE USED FOR DOCUMENTED ON-SITE TREE  
12 PLANTING BEYOND THAT REQUIRED BY THIS SUBTITLE OR OTHER APPLICABLE  
13 STATUTES.

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

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

21 (ii) If the reforestation or afforestation cannot be reasonably  
22 accomplished in the county and watershed in which the project is located, then the  
23 reforestation or afforestation shall occur in the county or watershed in the state in which  
24 the project is located.

25 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE  
26 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE  
27 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE  
28 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR  
29 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH  
30 REGULATIONS OF THE LOCAL FOREST CONSERVATION PROGRAM. THE  
31 REFORESTATION FUND MAY NOT BE USED TO FINANCE ADMINISTRATIVE  
32 ACTIVITIES ASSOCIATED WITH A MITIGATION BANK AND ANY CREDITS CREATED BY  
33 THE REFORESTATION FUND MAY NOT BE SOLD TO COMPENSATE FOR ADDITIONAL  
34 FOREST IMPACTS.

35 5-1610.1.

36 (A) THE DEPARTMENT SHALL DEVELOP STANDARDS AND ADOPT  
37 REGULATIONS FOR THE CREATION AND USE OF FOREST MITIGATION BANKS,  
38 INCLUDING CRITERIA FOR TRACKING, CREDITING, MAINTAINING, BONDING, AND  
39 REPORTING MITIGATION BANK ACTIVITIES.

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

12

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

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

7 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE  
8 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE ~~LONG-TERM~~  
9 PROTECTION AND CONSERVATION IN PERPETUITY OF FOREST MITIGATION BANKS  
10 ~~BY CONSERVATION EASEMENTS~~ CONSISTENT WITH REASONABLE MANAGEMENT  
11 PLANS, THROUGH METHODS THAT INCLUDE EASEMENTS, COVENANTS, OR SIMILAR  
12 MECHANISMS THAT SHALL BE IN PLACE AT THE TIME CREDITS ARE WITHDRAWN.

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

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

16 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY  
17 THE PRIVATE SECTOR; OR

18 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST  
19 MITIGATION BANKING.

20 (G) (1) CREDITS IN A MITIGATION BANK MAY NOT BE APPROVED FOR  
21 DEBITING UNTIL CONSTRUCTION OF THE MITIGATION BANK IS COMPLETE.

22 (2) A MITIGATION BANK SHALL MAINTAIN SUFFICIENT CREDITS IN  
23 RESERVE TO COVER ANTICIPATED EXPENSES OF COMPLETION OF THE MITIGATION  
24 BANK.

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

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

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

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