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(PRE-FILED)

SB 64/96 - EEA

**By: Senator Colburn**

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Assigned to: Economic and Environmental Affairs

Committee Report: Favorable

Senate action: Adopted

Read second time: February 11, 1997

## 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 5-103(a)(5) and 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

22 to be Section 5-103(a)(6) and 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y), (z), (aa),

23 (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn),

24 respectively

25 Annotated Code of Maryland

26 (1989 Replacement Volume and 1996 Supplement)

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1 BY repealing and reenacting, with amendments,  
 2 Article - Natural Resources  
 3 Section 5-103(c)(2) and (4), (d)(1), and (e)(2)(i), 5-1602(b)(7), 5-1603(a)(4) and  
 4 (g), 5-1604, 5-1607, 5-1610(d), (e), (h), and (i), and 5-1613  
 5 Annotated Code of Maryland  
 6 (1989 Replacement Volume and 1996 Supplement)

7 BY repealing and reenacting, with amendments,  
 8 Article - Natural Resources  
 9 Section 5-1601(z) and (ff)  
 10 Annotated Code of Maryland  
 11 (1989 Replacement Volume and 1996 Supplement)  
 12 (As enacted by Section 1 of this Act)

13 BY adding to  
 14 Article - Natural Resources  
 15 Section 5-103(a)(5) and (i), 5-1601(o) and (t), 5-1602(c), 5-1606(a)(5), and  
 16 5-1610.1  
 17 Annotated Code of Maryland  
 18 (1989 Replacement Volume and 1996 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 20 MARYLAND, That Section(s) 5-103(a)(5) and 5-1601(o), (p), (q), (r), (s), (t), (u), (v),  
 21 (w), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), and (ll),  
 22 respectively, of Article - Natural Resources of the Annotated Code of Maryland be  
 23 renumbered to be Section(s) 5-103(a)(6) and 5-1601(p), (q), (r), (s), (u), (v), (w), (x), (y),  
 24 (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm), and (nn),  
 25 respectively.

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

28 **Article - Natural Resources**

29 5-103.

30 (a) (5) "FOREST MITIGATION BANKING" MEANS THE INTENTIONAL  
 31 RESTORATION OR CREATION OF FORESTS UNDERTAKEN EXPRESSLY FOR THE  
 32 PURPOSE OF PROVIDING CREDITS FOR REFORESTATION REQUIREMENTS WITH  
 33 ENHANCED ENVIRONMENTAL BENEFITS FROM FUTURE ACTIVITIES.

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, ACCOMPLISHED THROUGH USE OF FOREST MITIGATION BANK CREDITS  
24 IN THE WATERSHED IN WHICH THE CONSTRUCTION ACTIVITY IS LOCATED.

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

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

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

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1 THE REFORESTATION FUND MAY NOT BE SOLD TO COMPENSATE FOR ADDITIONAL  
2 FOREST IMPACTS.

3 (I) FOREST MITIGATION BANKING UNDER THIS SECTION SHALL BE  
4 CONDUCTED IN ACCORDANCE WITH STANDARDS ADOPTED UNDER SUBTITLE 16 OF  
5 THIS TITLE.

6 5-1601.

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

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

18 (z) "Net tract area" means:

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

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

29 (3) FOR A LINEAR PROJECT:

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

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

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

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

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

5 5-1602.

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

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

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

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

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

20 5-1603.

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

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

31 5-1604.

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

40 (b) (1) The forest stand delineation shall be used during the preliminary review  
41 process to determine the most suitable and practical areas for forest [conservation and,]

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1 CONSERVATION. SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AND  
2 except when waived by the Department during approval or review of a local program,  
3 THE FOREST STAND DELINEATION shall contain the following components:

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

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

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

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

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

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

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

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

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

27                    (II) MINIMIZING OVERLAPPING MAPPING AND SAMPLING  
28 REQUIREMENTS FOR SITES WHERE NO DISTURBANCE OF PRIORITY FOREST  
29 RETENTION AREAS IS CONTEMPLATED.

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

36 5-1606.

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

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1 5-1607.

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

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

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

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

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

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

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

15 (7) Natural regeneration on-site; and

16 (8) Natural regeneration off-site.

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

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

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

30 (ii) The acquisition of an off-site protective easement for existing  
31 forested areas not currently protected as a mitigation technique, but the afforestation or  
32 reforestation credit granted may not exceed 50% of the area of the forest cover  
33 protected.]

34 (A) THE PREFERRED SEQUENCE FOR AFFORESTATION AND REFORESTATION  
35 SHALL BE ESTABLISHED BY THE STATE OR LOCAL AUTHORITY IN ACCORDANCE  
36 WITH THE FOLLOWING AFTER ALL TECHNIQUES FOR RETAINING EXISTING FOREST  
37 COVER ON-SITE HAVE BEEN EXHAUSTED:

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

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

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

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

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

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

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

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

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

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

34 (I) TRANSPLANTED OR NURSERY STOCK;

35 (II) WHIP AND SEEDLING STOCK; OR

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

38 (2) THE USE OF STREET TREES IN A MUNICIPAL CORPORATION WITH A  
39 TREE MANAGEMENT PLAN, IN AN EXISTING POPULATION CENTER DESIGNATED IN A  
40 COUNTY MASTER PLAN THAT HAS BEEN ADOPTED TO CONFORM WITH THE  
41 ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING ACT OF 1992, OR IN



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1 ANY OTHER DESIGNATED AREA APPROVED BY THE DEPARTMENT AS PART OF A  
2 LOCAL PROGRAM, UNDER CRITERIA ESTABLISHED BY THE LOCAL PROGRAM,  
3 SUBJECT TO THE APPROVAL OF THE DEPARTMENT, USING:

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

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

11 (3) WHEN ALL OTHER OPTIONS, BOTH ON-SITE AND OFF-SITE, HAVE  
12 BEEN EXHAUSTED, LANDSCAPING AS A MITIGATION TECHNIQUE, CONDUCTED  
13 UNDER AN APPROVED LANDSCAPING PLAN THAT ESTABLISHES A FOREST AT LEAST  
14 35 FEET WIDE AND COVERING AT LEAST 2,500 SQUARE FEET OF AREA.

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

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

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

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

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

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

31 (i) 30 inches; or

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

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

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

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

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1 (3) Establish or enhance forest buffers adjacent to critical habitats where  
2 appropriate;

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

5 (5) Establish plantings to stabilize slopes of 25% or greater and slopes of  
6 15% or greater with a soil K value greater than 0.35 including the slopes of ravines or  
7 other natural depressions;

8 [(5)] (6) Establish buffers adjacent to areas of differing land use where  
9 appropriate, or adjacent to highways or utility right-of-ways;

10 [(6)] (7) Establish forest areas adjacent to existing forests so as to increase  
11 the overall area of contiguous forest cover, when appropriate; and

12 [(7)] (8) Use native plant materials for afforestation or reforestation, when  
13 appropriate.

14 (e) (1) As part of the development of a forest conservation program, a local  
15 government shall develop provisions for:

16 (i) Preservation of areas described in subsections (c) and (d)(1) and  
17 (3) of this section;

18 (ii) Retention as forest of all land forested, afforested, or reforested  
19 under this subtitle; and

20 (iii) Limitation of uses of forest to those that are not inconsistent with  
21 forest conservation, such as recreational activities and forest management under  
22 subsection (f) of this section.

23 (2) The provisions required in paragraph (1) of this subsection may include  
24 protective agreements for areas of forest conservation, including conservation easements,  
25 deed restrictions, and covenants.

26 (f) Except for land that is preserved under subsection (e) of this section, an  
27 owner may place land that is forested, afforested, or reforested under this subtitle in the  
28 forest conservation and management program under § 8-211 et seq. of the Tax - Property  
29 Article or in a forest management plan prepared by a licensed forester and approved by  
30 the local authority or the State. Reforestation shall be required when the final  
31 regeneration harvest is complete or if determined to be necessary due to the lack of  
32 adequate natural regeneration.

33 5-1610.

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

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

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1 returned to the person who provided the money TO BE USED FOR DOCUMENTED  
2 ON-SITE TREE PLANTING BEYOND THAT REQUIRED BY THIS SUBTITLE OR OTHER  
3 APPLICABLE STATUTES.

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

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

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

14 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE  
15 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE  
16 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE  
17 ACCOMPLISHED THROUGH PURCHASE OF CREDITS IN, ESTABLISHMENT, OR  
18 MAINTENANCE OF A FOREST MITIGATION BANK IN ACCORDANCE WITH  
19 REGULATIONS OF THE DEPARTMENT. THE REFORESTATION FUND MAY NOT BE  
20 USED TO FINANCE ADMINISTRATIVE ACTIVITIES ASSOCIATED WITH A MITIGATION  
21 BANK AND ANY CREDITS CREATED BY THE REFORESTATION FUND MAY NOT BE  
22 SOLD TO COMPENSATE FOR ADDITIONAL FOREST IMPACTS.

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

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

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

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

41 (III) IF THE REFORESTATION OR AFFORESTATION CANNOT BE  
42 REASONABLY ACCOMPLISHED IN THE COUNTY OR WATERSHED IN WHICH THE  
43 PROJECT IS LOCATED, THEN THE REFORESTATION OR AFFORESTATION SHALL BE

12

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

8 5-1610.1.

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

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

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

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

21 (E) CRITERIA ESTABLISHED BY LOCAL OR STATE PROGRAMS FOR THE USE  
22 AND ESTABLISHMENT OF FOREST MITIGATION BANKS SHALL INCLUDE PROTECTION  
23 AND CONSERVATION IN PERPETUITY OF FOREST MITIGATION BANKS CONSISTENT  
24 WITH REASONABLE MANAGEMENT PLANS, THROUGH METHODS THAT INCLUDE  
25 EASEMENTS, COVENANTS, OR SIMILAR MECHANISMS THAT SHALL BE IN PLACE AT  
26 THE TIME CREDITS ARE WITHDRAWN.

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

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

30 (2) FUND THE ESTABLISHMENT OF FOREST MITIGATION BANKING BY  
31 THE PRIVATE SECTOR; OR

32 (3) USE STATE OR LOCAL GOVERNMENT LAND FOR FOREST  
33 MITIGATION BANKING.

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

36 (2) A MITIGATION BANK SHALL MAINTAIN SUFFICIENT CREDITS IN  
37 RESERVE TO COVER ANTICIPATED EXPENSES OF COMPLETION OF THE MITIGATION  
38 BANK.

13

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, notwithstanding the  
17 provisions of Section 2(2) of Chapter 489 of the Acts of the General Assembly of 1993,  
18 the Advisory Group on Forest Conservation established under that Act shall be reinstated  
19 and shall serve through May 31, 1999.

20 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 1997.