
By: **Delegate Hubbard**

Introduced and read first time: February 27, 2006

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources - Forest Conservation - 100-Year Floodplain**

3 FOR the purpose of altering the definition of "net tract area" for forest conservation
 4 requirements and forest mitigation bank credits to include 100-year floodplains
 5 under certain circumstances; including in the definition of "net tract area" a
 6 100-year floodplain, nontidal wetland, or stream buffer under certain
 7 circumstances; and generally relating to the forest conservation program.

8 BY repealing and reenacting, with amendments,
 9 Article - Natural Resources
 10 Section 5-1601(z)
 11 Annotated Code of Maryland
 12 (2005 Replacement Volume and 2005 Supplement)

13 BY repealing and reenacting, without amendments,
 14 Article - Natural Resources
 15 Section 5-1601(aa), (bb), (ff), and (jj) and 5-1607(c)(1) through (3) and (d)(1)
 16 through (4)
 17 Annotated Code of Maryland
 18 (2005 Replacement Volume and 2005 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Natural Resources**

22 5-1601.

23 (z) (1) "Net tract area" means:

24 [(1)] (I) Except in agriculture and resource areas or linear project areas,
 25 the total area of a site, including both forested and nonforested areas, to the nearest
 26 one-tenth acre [reduced by that area where forest clearing is restricted by another
 27 local ordinance or program] INCLUDING THE AREA WITHIN THE BOUNDARIES OF A
 28 100-YEAR FLOODPLAIN;

1 [~~(2)~~] (II) In agriculture and resource areas, the portion of the total tract
2 for which land use will be changed or will no longer be used for primarily agricultural
3 activities [~~reduced by that area where forest clearing is restricted by another local~~
4 ordinance or program; and] INCLUDING THE AREA WITHIN THE BOUNDARIES OF A
5 100-YEAR FLOODPLAIN; AND

6 [~~(3)~~] (III) For a linear project:

7 [~~(i)~~] 1. The area of a right-of-way width, new access roads and
8 storage; or

9 [~~(ii)~~] 2. The limits of disturbance as shown on an application for
10 sediment and erosion control approval or in a capital improvements program project
11 description.

12 (2) "NET TRACT AREA" INCLUDES A NONTIDAL WETLAND, STREAM
13 BUFFER, OR A 100-YEAR FLOODPLAIN IF THE WETLAND, BUFFER, OR FLOODPLAIN
14 AREA:

15 (I) IS PLACED IN A PERPETUAL CONSERVATION EASEMENT; AND

16 (II) HAS NOT BEEN CLEARED, LOGGED, OR TIMBERED BY
17 MECHANICAL MEANS FOR A MINIMUM OF 5 CONSECUTIVE YEARS FROM THE
18 EFFECTIVE DATE OF AN APPLICATION FOR A DEVELOPMENT PROJECT.

19 (aa) (1) "Nontidal wetland" means an area that is inundated or saturated by
20 surface or groundwater at a frequency and duration sufficient to support, and under
21 normal conditions does support, a prevalence of vegetation typically adapted for life in
22 saturated soil conditions, commonly known as hydrophytic vegetation.

23 (2) The determination of whether an area is considered a nontidal
24 wetland shall be made in accordance with the publication known as the "Federal
25 Manual for Identifying and Delineating Jurisdictional Wetlands", published in 1989
26 and as may be amended and interpreted by the U.S. Environmental Protection
27 Agency.

28 (3) "Nontidal wetlands" do not include tidal wetlands regulated under
29 Title 16 of the Environment Article.

30 (bb) (1) "One hundred year floodplain" means an area along or adjacent to a
31 stream or body of water, except tidal waters, that is capable of storing or conveying
32 floodwaters during a 100-year frequency storm event.

33 (2) A 100-year flood is a flood which has a 1% chance of being equaled or
34 exceeded in any given year. Except for Class III waters (natural trout streams), a body
35 of water with a watershed less than 400 acres is excluded.

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

1 per acre with at least 50% of those trees having the potential of attaining a 2 inch or
2 greater diameter measured at 4.5 feet above the ground, within 7 years.

3 (2) "Reforestation" includes landscaping of areas under an approved
4 landscaping plan that establishes a forest that is at least 35 feet wide and covering
5 2,500 square feet of area.

6 (3) "Reforestation" for a linear project which involves overhead
7 transmission lines may consist of a biological community dominated by trees and
8 woody shrubs with no minimum height or diameter criteria.

9 (jj) "Stream buffer" means all lands lying within 50 feet, measured from the
10 top of each normal bank of any perennial or intermittent stream.

11 5-1607.

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

17 (1) Trees, shrubs, and plants located in sensitive areas including
18 100-year floodplains, intermittent and perennial streams and their buffers, coastal
19 bays and their buffers, steep slopes, and critical habitats;

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

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

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

25 (1) Establish or enhance forest buffers adjacent to intermittent and
26 perennial streams and coastal bays to widths of at least 50 feet;

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

30 (3) Establish or enhance forest buffers adjacent to critical habitats where
31 appropriate;

32 (4) Establish or enhance forested areas in 100-year floodplains;

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2006.