

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1619 (Delegate Hubbard)  
Environmental Matters

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Natural Resources - Forest Conservation - 100-Year Floodplain

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This bill modifies the definition of “net tract area” for forest conservation requirements and forest mitigation bank credits to include the area within the boundaries of a 100-year floodplain; it also repeals a portion of the current definition. The bill specifies that the term includes a nontidal wetland, stream buffer, or a 100-year floodplain if the wetland, buffer, or floodplain area is placed in a perpetual conservation easement and has not been cleared, logged, or timbered by mechanical means for at least five consecutive years from the effective date of an application for a development project.

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Fiscal Summary

**State Effect:** Potential increase in State expenditures related to forest conservation mitigation costs associated with the development of any State-owned land. Any such increase cannot be reliably estimated at this time.

**Local Effect:** Local governments could incur an increase in costs to amend their ordinances to reflect the bill’s changes and to handle any increase in amendments to record plats. Local revenues from recording fees and afforestation/reforestation fees could increase. Potential increase in local expenditures related to forest conservation mitigation costs associated with the development of any locally-owned land.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** The Forest Conservation Act provides that before an application for sediment and erosion control or a subdivision is approved, a forest conservation plan must be approved for the site. This plan provides for forest retention on the site consistent with the established land use or through payment made into a local fund for afforestation or reforestation. If afforestation or reforestation cannot be reasonably accomplished in the county or watershed in which the project is located, then it must be accomplished through purchase of credits in, establishment, or maintenance of a forest mitigation bank.

State law allows local ordinances to deduct from the total tract area those areas that are already covered by another local ordinance in order to determine the net tract area. Mitigation is determined based on the net tract area, so as to prevent a developer from having to comply with multiple ordinances on the same square foot of ground.

“Net tract area” means: (1) except in agriculture and resource areas or linear project areas, the total area of a site, including both forested and nonforested areas, to the nearest one-tenth acre reduced by that area where forest clearing is restricted by another local ordinance or program; (2) in agriculture and resource areas, the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities reduced by that area where forest clearing is restricted by another local ordinance or program; and (3) for a linear project, the area of a right-of-way width, new access roads and storage or the limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

**State/Local/Small Business Effect:** The bill’s intent is to provide developers with an option that would decrease their mitigation costs by including a 100-year floodplain in the definition of net tract area. However, according to the Department of Natural Resources (DNR), based on the results of several modeling scenarios, the bill could actually result in an increase in forest conservation mitigation activities and associated costs. Accordingly, it is unclear if developers would choose this option. Further, DNR advises that, even if developers do not choose this option, because the bill repeals the provision that allows for the net tract area to be reduced by that area where forest clearing is restricted by another local ordinance, the bill may still lead to an increase in mitigation activities and costs. Affected landowners (including the State, local governments, and small businesses) would likely bear any increase in mitigation costs. Nursery and landscaping businesses as well as surveyors could benefit from an increase in the demand for their services, while businesses involved with the timber industry could be negatively impacted.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Natural Resources, Maryland Department of Planning, Harford County, Montgomery County, Prince George's County, St. Mary's County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2006  
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