

CHAPTER 614

(House Bill 588)

AN ACT concerning

Natural Resources – Forest Conservation – Net Tract Area

FOR the purpose of altering the definition of “net tract area” for forest conservation requirements and forest mitigation bank credits to include certain forested areas of certain tracts of land partially within 100-year floodplains or wetlands under certain circumstances; ~~including in the definition of “net tract area” a nontidal wetland, stream buffer, and the forested area of a 100-year floodplain or wetland under certain circumstances~~; providing for the application of this Act; providing for the termination of this Act; and generally relating to the forest conservation program.

~~BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 5-1601(z) and (aa)
Annotated Code of Maryland
(2005 Replacement Volume and 2006 Supplement)~~

~~BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 5-1601(bb), (ff), and (jj) and 5-1607(c)(1) through (3) and (d)(1) through (4)
Annotated Code of Maryland
(2005 Replacement Volume and 2006 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~the Laws of Maryland read as follows:~~ for purposes of the application of Title 5, Subtitle 16 of the Natural Resources Article to a tract of land of at least 350 acres of which at least 15% is within the boundaries of a 100-year floodplain or wetland, the term “net tract area” includes the forested areas within the floodplain or wetland if a perpetual conservation easement is placed on the forested areas at the time the plat of the tract is recorded.

~~Article – Natural Resources~~

~~5-1601-~~

~~(z) (1) “Net tract area” means:~~

~~[(1)] (I) 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, INCLUDING THE FORESTED AREA WITHIN THE BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND;~~

~~[(2)] (II) 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, INCLUDING THE FORESTED AREA WITHIN THE BOUNDARIES OF A 100-YEAR FLOODPLAIN OR WETLAND; and~~

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

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

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

~~(2) “NET TRACT AREA” INCLUDES A NONTIDAL WETLAND, STREAM BUFFER, AND THE FORESTED AREA OF A 100-YEAR FLOODPLAIN IF THE WETLAND, BUFFER, AND FORESTED 100-YEAR FLOODPLAIN AREA IS PLACED IN A PERPETUAL CONSERVATION EASEMENT AT THE TIME OF RECORD PLAT.~~

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

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

~~(H) THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL APPLY, IN THE SAME MANNER, TO ALL JURISDICTIONS OF THE STATE.~~

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

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

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

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

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

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

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

~~5-1607.~~

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to prevent any person that ~~submitted~~ submits a forest conservation plan before ~~October~~ July 1, 2007, to the State or local authority in accordance with § 5-1605 of the Natural Resources Article, and has not been issued a building permit, from revising the net tract area, for a tract of land of at least 350 acres of which at least 15% is within the boundaries of a 100-year floodplain or wetland, to include the forested area within the boundaries of ~~a~~ the 100-year floodplain or wetland.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2007. It shall remain effective for a period of 8 months and, at the end of February 29, 2008, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 17, 2007.