

Forest Conservation - No Net Loss Provision

Staff Report

“No Net Loss” (NNL) - this concept refers to the fact that the FCA will allow some removal of forest acreage, but would require the applicant to fully offset that loss with newly planted acreage. The Attorney General’s Office (headed by Attorney General Frosh) has issued an opinion that NNL is permissible in an FCA.

The AG’s Opinion was based on the premise that the City of Annapolis is contemplating the enactment of a forest conservation program with standards that are more stringent than those in the State Act and that its efforts are being complicated by uncertainty on these questions. Specifically, the AG’s Opinion iterated that local jurisdictions may enact forest conservation programs with requirements and standards that are more stringent than those set forth in the Forest Conservation Act. As such, local jurisdictions may require development projects to meet a NNL requirement and levels of reforestation and afforestation that are more protective than the standards and requirements set forth in the state law. If a local government elects to do so, it is not required to justify the greater level of protection, but the Department of Natural Resources (DNR) may require the local jurisdiction to explain how its program is consistent with the intent, requirements, and standards of the Act.

*FOREST CONSERVATION ACT – Whether Local Jurisdictions May Enact Programs With Conservation Thresholds And Reforestation Ratios That Are More Stringent Than State Law, 100 Op. Att’y Gen. 120 (2015).*