

Chapter 437 of the Acts of the General Assembly of 1992, or in any other designated area approved by the Department as part of a local program, a local program may, subject to the approval of the Department, establish criteria for the use of:

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

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

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

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

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

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

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

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

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

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

(4) THE STATE OR LOCAL JURISDICTION MAY ALLOW AN ALTERNATIVE SEQUENCE FOR A SPECIFIC PROJECT IF NECESSARY TO ACHIEVE THE OBJECTIVES