

March 1, 2023

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Testimony for SB526/HB723

(Natural Resources- Forest Preservation and Retention)

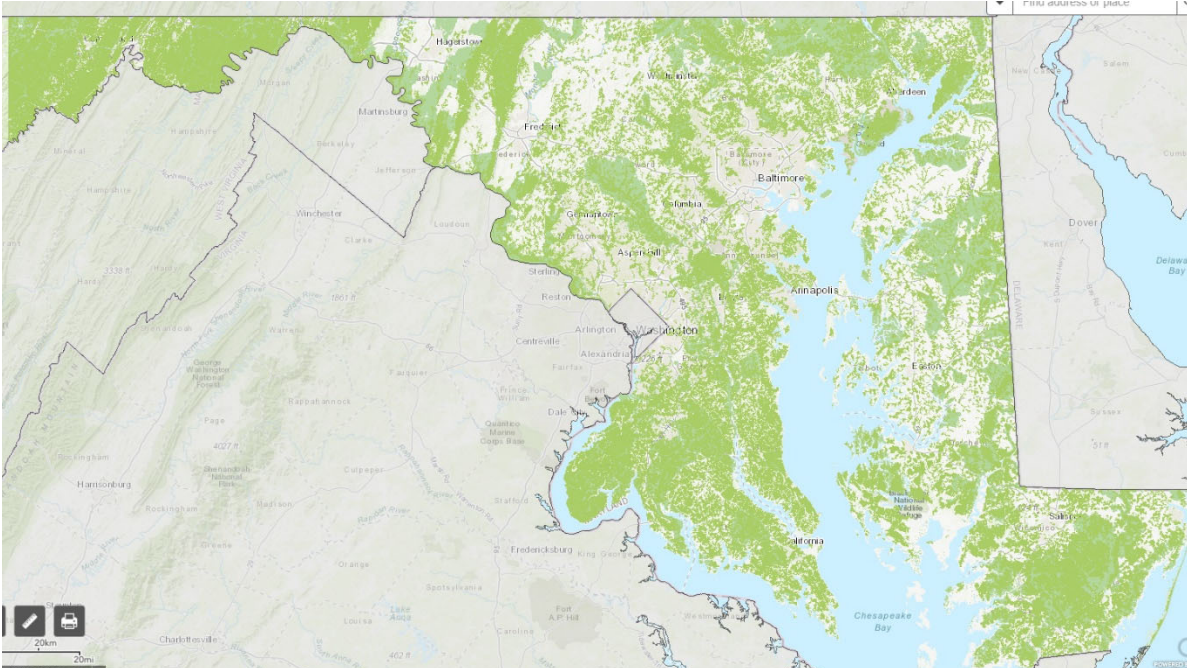
My name is Matthew Wessel. I chair the Environmental Committee for the Maryland Building Industry Association (MBIA). I'm a landscape architect and ISA Certified Arborist with 23 years of experience entitling projects and implementing the forest conservation act in several Maryland counties and municipalities. I am writing this letter at the request of the MBIA and NAIOP to discuss the proposed changes to the Forest Conservation Act (FCA).

#### Our Concerns:

In November 2022 the state released a forest technical study showing that statewide forest is approaching “no net loss” despite the population having grown 17% during the timeframe studied. As a result, this bill revises the state goal of “no net loss” of forest to a “net gain” of forest. This bill puts a disproportionate burden of increasing forest on entities regulated by the forest conservation act, primarily projects that provide employment, institutions, and homes. The bill does not regulate forest impacts from other entities or activities not subject to or exempt from the forest conservation act. The proposed bill does this to such an extent it is plausible that this bill could circumvent the zoning and planning approval processes typically administered by local jurisdictions and limit development by making it difficult to obtain a variance and/or meet mitigation requirements.

#### *Priority Forest- Variance and Increased Mitigation*

This bill **redefines “Priority Forest” to add thousands of acres of forest and requires a variance from the law to impact those forest**. This would result in numerous projects planned for growth by local governments to obtain a variance from the law. The “unwarranted hardship” standard of review makes obtaining a variance prohibitively difficult and time consuming to obtain. Variances also open projects up to litigation and project delays. The following is a map of GIS delineated FIDS habitat and DNR Targeted Ecological Areas which are two of the four areas newly defined as priority forest requiring a variance. Source MERLIN- Maryland Environmental Resource & Land Information Network.

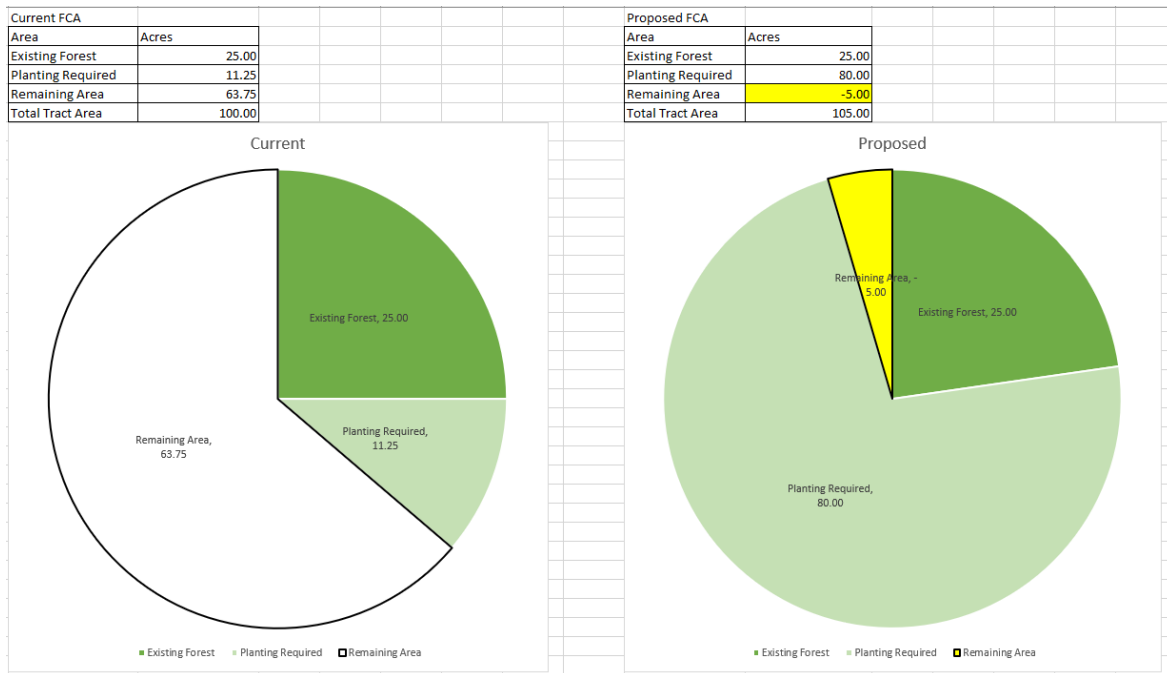


<https://gisapps.dnr.state.md.us/coastalatl2019/MERLIN/index.html>

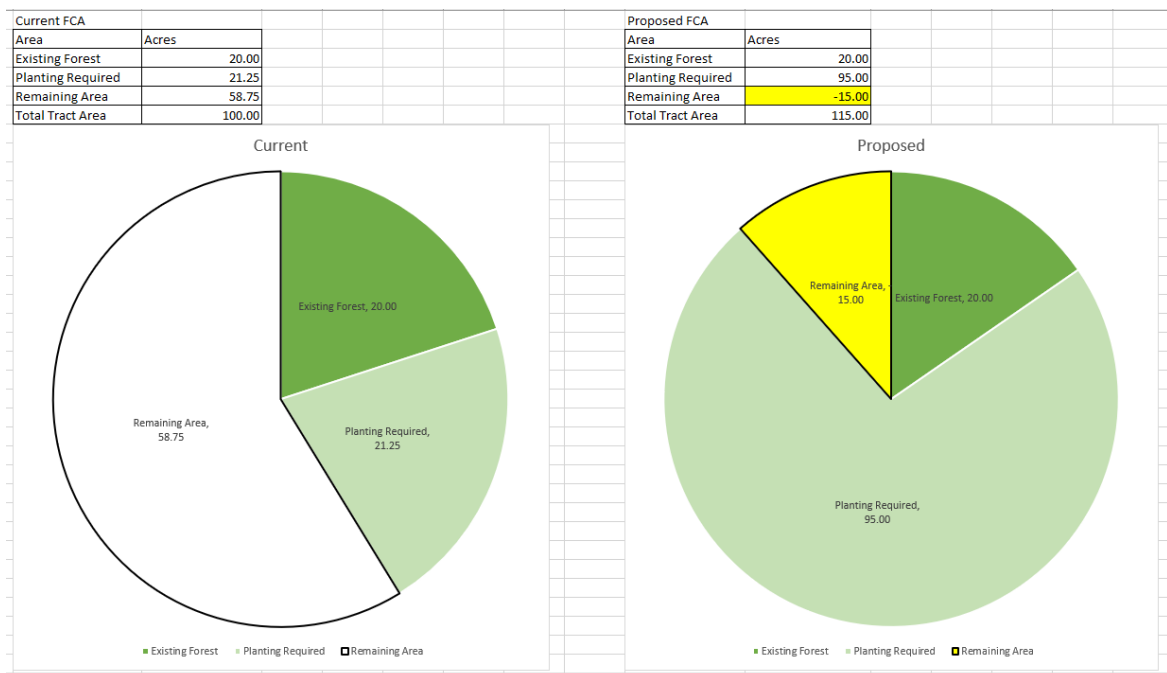
Additionally, the bill **requires 2:1 Mitigation for impacts to priority forest** including “contiguous forest”. This would result in instances where more mitigation would be required than area available to meet on-site.

The following chart illustrates the impact of SB526/HB723 using the examples in the State Forest Conservation Technical Manual. The example uses a 100-acre site with 70 acres of existing forest and a conservation threshold of 25%. Yellow highlights are the amount of mitigation required above the total area of the 100-acre site. Only clearing above the conservation threshold leaves some room for development although in this example 58% less than under the current regulations.

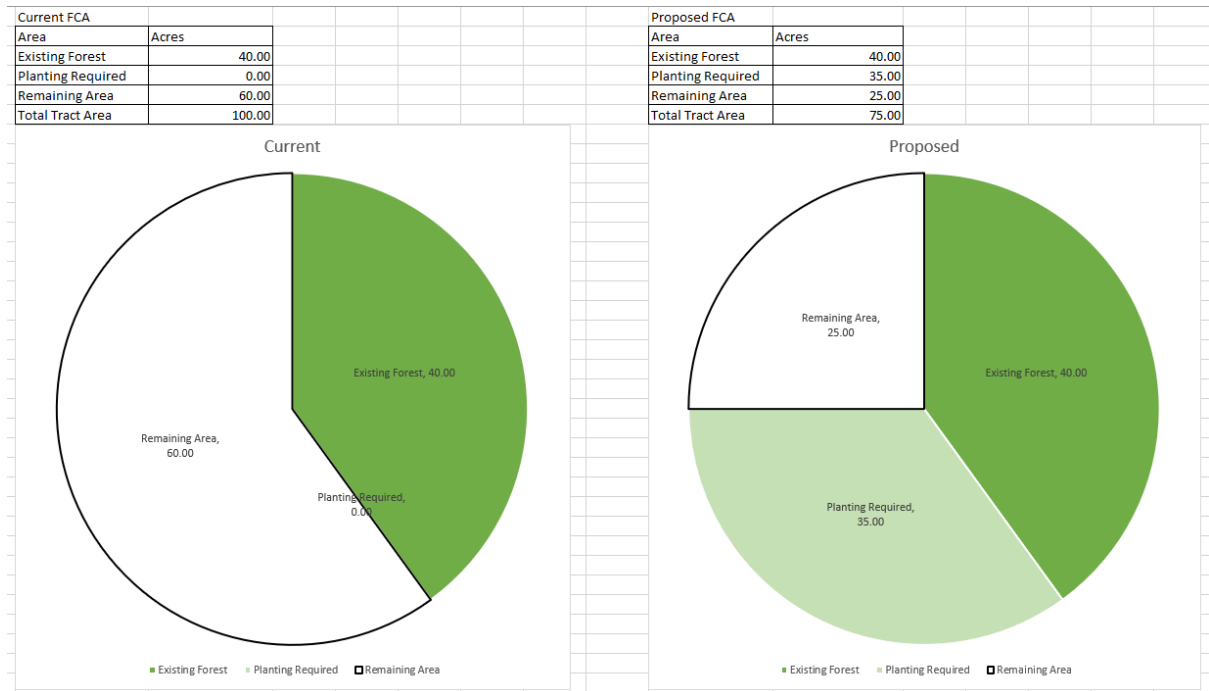
### Clearing Down to the Conservation Threshold



### Clearing Below Conservation Threshold



## Clearing Above the Conservation Threshold



This will require mitigation banking to be utilized as off-site planting opportunities are usually limited. If mitigation banking is not feasible in lieu fee is the last resort for the project to move forward.

### Mitigation Banking

In 2021, HB 991 put limits on banking based on the preservation of large tracts of contiguous forest. This bill **puts further constraints on mitigation banking by adding further restriction on where this banking can occur and maintains a phase out date for its use.** This bill removes the limits HB 991 placed on the supply and instead limits the demand by only allowing projects submitted before December 31, 2020, to utilize banking based on preservation. Even if the date were eliminated, new banks based on preservation are limited to growth areas, taking an income source away from entities that used to conserve forest that were otherwise not regulated by the FCA and instead can only occur on land in areas planned for growth.

### Threatens Mature Projects

This bill contains no transition or grandfathering provisions. This proposed bill would impact numerous projects that have already spent significant resources obtaining approvals that are not yet through the entire development process.

### Conclusion

This bill would result in projects tied up over the variance requirement, projects that cannot meet their mitigation requirements onsite, depleted mitigation banking opportunities, and increased in lieu fee payments not necessarily resulting in more forested land.

Only minor changes would be needed to meet the “net forest gain” goal of the state without adding more complexity and uncertainty. We would appreciate the opportunity to work with sponsors and stakeholders within a timeframe that respects the complexity of this issue to improve forest cover in the State of Maryland.

Thank you for the opportunity to provide testimony.