

FAVORABLE_SB526_SignOn.pdf

Uploaded by: Anna Griffith

Position: FAV



SB 526 - Natural Resources - Forest Preservation and Retention

Position: SUPPORT

Date: March 2, 2023

Contact: Anna Mudd, Potomac Conservancy

Our organizations request a **FAVORABLE** report on SB 526 from the Education, Energy and Environment Committee.

Maryland's Forest Conservation Act, passed in 1991, introduced a minimum floor for mitigation when forests are cleared for development. But these standards are not equipped to address today's challenges to climate and clean water. An unbalanced reforestation ratio of a quarter acre planted for each acre cleared, combined with other credits, means that nearly two-thirds of a forested site can be felled with no replanting required at all. Without clear definitions and protections for the state's most valuable priority forests, too many are left fragmented and vulnerable to degradation.

This legislation will update and strengthen forest goals and definitions to provide clarity and reflect new data, protect and conserve more forest land and tree canopy, and give local governments significantly greater flexibility to pursue solutions that meet local development priorities and advance equity.

A recent study published by the Harry R. Hughes Center for Agro-Ecology of the University of Maryland found that Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018. Losses to development and forest fragmentation - particularly in growing suburban counties - remain significant.

Under current law, jurisdictions must usually consider forest impacts from development in a formulaic, project-specific way. This legislation will encourage local innovation by empowering counties and municipalities to design a program customized to meet their local priorities while meeting a stronger forest conservation standard. The bill also recognizes the important role some smaller forested areas play in urban and suburban areas by providing options to receive preservation credit for activity that enhances the health of these areas. In summary, the bill raises the standard for forest conservation but gives local governments and developers the tools they need to succeed in meeting it.

We respectfully request a **FAVORABLE** report from this Committee on SB 526.

Erik Fisher
Maryland Land Use Planner, AICP
Chesapeake Bay Foundation

Anna Mudd
Senior Director of Policy
Potomac Conservancy

Joel Dunn
President and CEO
Chesapeake Conservancy

Denisse Guitarra
MD Conservation Advocate
Nature Forward

Robert K. Musil, P.H.D., M.P.H.
President & CEO
The Rachel Carson Council

Kit Gage
Interim President
Friends of Sligo Creek

Jim Brown, ASLA
Director of Policy
Audubon Mid-Atlantic

Caroline Taylor
Executive Director
Montgomery Countryside Alliance

Gary Allen
President
Maryland Forestry Association

Paulette Hammond
President
Maryland Conservation Council

Nancy Soreng
President
League of Women Voters of Maryland

Jeanne Braha
Executive Director
Rock Creek Conservancy

Annie Richards
Chester Riverkeeper
ShoreRivers

Matt Pluta
Choptank Riverkeeper
ShoreRivers

Zack Kelleher
Sassafras Riverkeeper
ShoreRivers

Mark Southerland, PhD
Legislative Director
Safe Skies Maryland

Bonnie Raindrop
Central Maryland Beekeepers Association
Baltimore Beekeeping Network

Diana Conway
President
Safe Healthy Playing Fields Inc.

Sarah Morse
Executive Director
Little Falls Watershed Alliance

Bonnie Bick
President
Chapman Forest Foundation

Linda Coyle, Co-Chair
Multi-Faith Alliance of Climate Stewards
(MACS) of Frederick

Cecilia Plante
Co-Chair
Maryland Legislative Coalition

Staci Hartwell
Environment and Justice Chair
NAACP Maryland State Conference

Matt Johnston
Executive Director
Arundel Rivers Federation

Annie Bristow
Convener
Mountain Maryland Movement

Hal Delaplane
President
Conservancy for Charles County

Taylor Smith-Hams, MPA, CC-P
Advocacy & Outreach Senior Manager
Blue Water Baltimore

Robin G. Todd PhD
Chair, Conservation Committee
Maryland Ornithological Society

Nina Beth Cardin
Co-Founder and Director
Maryland Campaign for Environmental
Human Rights

Karen Metchis
Coordinating Committee
Climate Action Plan Coalition for
Montgomery Coun

Katherine J. Lautar
Executive Director
Baltimore Green Space

Jay Martin
President
Friends of the Nanticoke River

Alex Winter
President
Mattawoman Watershed Society

Robin Broder
Acting Executive Director
Waterkeepers Chesapeake

Zoe Gensheimer
Advocacy Director
Baltimore Tree Trust

Dan Smith
President
Friends of Lower Beaverdam Creek

Carol Dunahoo
Board Secretary
Wicomico Environmental Trust

Sandy Sparks
President
Friends of the Jones Falls

SB 526 Natural Resources – Forest Preservation and

Uploaded by: Cait Kerr

Position: FAV

Thursday, March 2, 2023

TO: Brian Feldman, Chair of the Senate Education, Energy, and the Environment Committee; and Committee Members

FROM: Michelle Dietz, The Nature Conservancy, Director of Government Relations; and Cait Kerr, The Nature Conservancy, Conservation & Climate Policy Analyst

POSITION: Support SB 526 - Natural Resources – Forest Preservation and Retention

The Nature Conservancy (TNC) supports SB 526 offered by Senator Elfreth. TNC is a global conservation organization working to conserve the lands and waters on which all life depends. In Maryland, our work focuses on delivering science-based, on-the-ground solutions that secure clean water and healthy living environments for our communities, reducing greenhouse gas emissions and increasing resilience in the face of a changing climate. We are dedicated to a future where people and nature thrive together.

SB 526 seeks to update Maryland's Forest Conservation Act (FCA) in order to provide clear definitions and protections for our state's most valuable priority forests. The current FCA standards have become outdated and insufficient to address today's challenges; this has resulted in many forests in Maryland becoming fragmented and increasingly vulnerable to degradation.

According to a recent study from the Hughes Center for Agro-Ecology, Maryland experienced a net statewide forest loss of more than 19,000 acres between 2013 and 2018. Significant losses were due to development and forest fragmentation, particularly in growing suburban counties. SB 526 reflects this study's data and findings to better protect and conserve forested lands and tree canopy from current threats. It also provides local governments with significantly greater flexibility to pursue solutions that meet local development priorities and advance equity. This legislation will encourage local innovation by enabling counties and municipalities to design programs customized to meet their local needs and priorities, while meeting a stronger overall forest conservation standard. It also recognizes smaller forested areas' importance to improving communities' health and resilience and places value on those benefits.

Each year, the United States loses an area the size of Delaware to development and unsustainable use. This land and biodiversity loss can often be irreversible. Here in Maryland, the lands and waters that surround us are precious resources. They are an invaluable part of our heritage, our economy, and our identity. The Appalachians are one of the most resilient, diverse, and productive ecosystems on Earth. TNC has prioritized conservation across this ancient chain of forested mountains, valleys, wetlands and rivers as a global imperative due to the high biological diversity of species, the carbon stored in the forests and the rich history and culture of this landscape, beginning with the original Indigenous stewards. Through our work to protect this priority landscape, TNC has seen first-hand how critical it is to protect and conserve forested lands and tree canopy. Maryland's forests play a critical role in building climate resilience, enhancing public health, and preserving our state's rich biodiversity. Forest connectivity provides much needed habitat bridges, especially as climate change drives species to move and adapt.

Climate change and a wide range of human activities are impacting forests at an unprecedented and unsustainable rate. Maryland's forests provide significant economic benefits, in the form of ecosystem services such as pollination and water filtration and storage, as well as recreational opportunities. By passing SB 526, we can take marked steps to reverse forest loss in our state in order to create a future where natural places can support vulnerable species and can continue to provide valuable ecosystem services on which state residents depend.

TNC commends Senator Elfreth for advancing legislation aimed at better protecting Maryland's forests and preserving the many values and benefits that they provide.

Therefore, we urge a favorable report on SB 526.

SB526 - FAV - Nature Forward.pdf

Uploaded by: Denisse Guitarra

Position: FAV

March 1, 2023

Written testimony for SB526 - Natural Resources - Forest Preservation and Retention ¹

Position: Favorable

Submitted by: Denisse Guitarra, MD Conservation Advocate, Nature Forward



Dear Senate Education, Energy and the Environment Committee,

Nature Forward (formerly Audubon Naturalist Society) is the oldest independent environmental organization protecting nature in the DC metro region. Our mission is to inspire residents of the greater Washington, DC, region to appreciate, understand, and protect their natural environment through outdoor experiences, education, and advocacy. We thank the Senate Education, Energy and the Environment Committee for the opportunity to provide testimony on SB526 which seeks to update the state's current forest conservation law. Nature Forward has advocated for forest conservation at the MD General Assembly since passage of the original Forest Conservation Act in 1991.

We support SB526 because, if enacted, this bill will 1) Protect and conserve more forested land and tree canopy in the state of Maryland; 2) Provide local county governments significantly greater flexibility to pursue effective environmental solutions that meet our community needs and advance equity; and 3) Update forest protections to be in alignment with the latest scientific findings and recommendations from the 2022 Technical Study on Changes in Forest Cover and Tree Canopy in Maryland.²

More Forests Protected

This bill will protect and conserve more forested land and tree canopy in the state of Maryland. Forests purify our air and water, reduce stormwater run-off, reduce heat, reduce stress levels in people, connect communities, serve as habitats for wildlife and so much more that is essential to human health and the resilience of biodiversity in plants and animals. The Maryland Forest Conservation Act, passed in 1991, set a minimum reforestation ratio of a quarter acre planted for each acre cleared (plus other credits). This results in nearly two-thirds of a forested

¹ SB526 - Natural Resources - Forest Preservation and Retention. Available at:

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0526?ys=2023RS>

² Maryland Forest Technical Study. Nov 2022. Harry R. Hughes Center for Agro-Ecology of the University of Maryland Available at: <https://www.chesapeakeconservancy.org/mdforeststudy2022>



site that can be felled with no replanting required at all. The time to update Maryland's Forest Conservation is NOW, especially under our current climate crisis. By clarifying definitions within the law with SB526, the state will be able to protect more of our last remaining priority forests, many of which are fragmented and vulnerable to degradation.

More flexibility for local jurisdictions

SB526 will provide local county governments significantly greater flexibility to pursue effective environmental solutions that meet our community needs and advance equity. Nature Forward is one member of the Montgomery County Forest Coalition that consists of members from 13 environmental organizations. The Coalition has been working to update Montgomery County's Forest Conservation Law for over three years.³ After many conversations with County Council, Planning Staff, environmental leaders, and community members we have all come to an agreement and consensus on amendments on Bill 25-22 - Forest Conservation- Tree bill.⁴ If approved, this bill will update and improve the protection status of Montgomery County's forests. The local Montgomery County Forest Conservation Law bill serves as an example that local jurisdictions in Maryland are interested in working on improving our forest conservation laws via working through our own regulatory process to improve greater protections for our forests. Furthermore, because of the greater flexibility for local county governments in the proposed SB526, Montgomery County's proposed bill is expected to comply with and complement these updates to Maryland's Forest Conservation Act.

Environmental justice in forests protection

Eliminating barriers preventing more people from enjoying the outdoors in forests is part of environmental justice. Nature Forward favorably supports SB526 because we have heard first-hand from disfavored communities across Maryland in Long Branch, Langley Park, Riverdale Park, and Edmonston that they want to see more forests and trees.

Since 2019, Nature Forward has worked with a majority Latinx immigrant community in Long Branch located in Silver Spring, MD. This is an urbanized area undergoing Purple Line construction, with the narrow Long Branch stream valley park cutting through the community. Most of these families come from countries where their connection to nature was and is part of their culture. These families are eager to get outdoors in the little time they have after holding multiple jobs, and often live in rapidly deteriorating apartment units. Across these years, we have seen the community members express the need to see more forests, urban tree canopy,

³ Montgomery County Forest Conservation Bill 25-22. Nature Forward. Available at:

<https://natureforward.org/take-action-now-save-montgomery-countys-forests/>

⁴ Bill 25-22 - Forest Conservation - Trees. Montgomery County, MD. Available at:

<https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=2766&fullTextSearch=bill%20AND%2025-22>



and increased access to greenspaces for outdoor recreation activities for their family's health and wellbeing.⁵ Furthermore, in the recently showcased Climate Stories Ambassadors Project short film series produced by Montgomery County Department of Environment, individual community members expressed their need and desire to see more trees across the county.⁶

MD Forest Study

The bill will update forest protections to be in alignment with the latest scientific findings and recommendations from the Harry R. Hughes Center for Agro-Ecology of the University of Maryland Forest Study⁷. This report was mandated by previous legislations of SB729 (2019)⁸ and HB991 (2021).⁹ A couple of major findings in the report were that 1) “Montgomery and Prince George’s counties accounted for more than 44% of the state’s total tree canopy loss;” 2) Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018; and 3) most forests priority forests in MD are experiencing fragmentation and are being taken over by invasive plant species. The Hughes Center study identified a huge imbalance in banking credits: 4 out of every 5 acres were preserved forest, with only 1 out of 5 acres newly planted which means that every acre of replanting offset in a preservation bank shrinks the county’s footprint by that acre and hence resulting in forest loss. Therefore, it is crucial that limits are placed on unrestricted banking to prevent further forest loss across Maryland, as an acre of forest banked is an acre of forest lost. If enacted, SB526 will prove the protection MD forests need as aligned with this study.

On behalf of Nature Forward and our 28,000 members and supporters, we respectfully urge this committee to support SB526. Protecting our forests now will help to continue to build healthy and climate resilient communities for Maryland into the future.

Sincerely,

Denisse Guitarra, Nature Forward Maryland Conservation Advocate
Debra Street, Nature Forward Conservation Volunteer

⁵ Nature Forward - Long Branch community outreach. Available at:

<https://natureforward.org/program/long-branch-community-outreach/>

⁶ Climate Stories Ambassadors Project. Montgomery County, MD. Available at:

<https://www.montgomerycountymd.gov/climate/climate-stories-ambassadors.html>

⁷ Maryland Forest Technical Study. Nov 2022. Harry R. Hughes Center for Agro-Ecology of the University of Maryland Available at: <https://www.chesapeakeconservancy.org/mdforeststudy2022>

⁸ SB729 / CH405. Technical Study on Changes in Forest Cover and Tree Canopy in Maryland. Available at: <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0729/?ys=2019rs>

⁹ HB991/CH645. Tree Solutions Now Act of 2021. Available at:

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0991/?ys=2021rs>

SB 526_CBF_FAV.pdf

Uploaded by: Erik Fisher

Position: FAV



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 526

Natural Resources – Forest Preservation and Retention

Date: March 2, 2023

To: Education, Energy, & the Environment Committee

Position: **Support**

From: Erik Fisher, AICP,
MD Land Use Planner

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 526, which updates the state’s forest preservation goals while providing new flexibility and tools for local governments and land developers to protect and enhance Maryland’s woodlands. A recent study commissioned by the General Assembly has found that, despite previous and ongoing preservation efforts, forest loss continues unabated with land development the leading cause. Nevertheless, Maryland still has the opportunity to reverse the trend. New tools are needed now to turn these losses to gains, restoring the numerous benefits trees provide to people and nature and stabilizing efforts to clean our waterways.

SB 526 supports local innovation and works with local priorities to curb forest loss from development.

Through the Forest Conservation Act (FCA), the state has long partnered with cities, towns, and counties to manage the impacts of development on forests. Now more than thirty years old, the FCA has slowed – but not stopped – forest loss. SB 526 updates the FCA to be both more flexible and more effective than current law. It does so by doing the following:

- **Setting a consistent standard:** SB 526 recognizes existing goals to stop the net loss of forest – and the commitment for other environmental restoration programs to achieve a net gain – by setting a consistent standard of “no-net-loss” for local forest conservation programs governing development activity.
- **Supporting local priorities:** Development priorities vary across jurisdictions, and this bill provides the opportunity for local governments to design a customized forest preservation program that supports those local priorities. As opposed to current law which applies formulaic requirements to nearly every development project, SB 526 gives local governments the power to create a holistic forest preservation program that meets the “no-net-loss” standard.
- **Recognizing local innovation:** Some jurisdictions across Maryland are already applying creative solutions to protect forests. SB 526 ensures that these jurisdictions receive appropriate preservation credit for their efforts.
- **Raising the bar for preservation:** SB 526 encourages local jurisdictions to develop their own local program to achieve no-net-loss. In cases where counties or towns elect not to customize their program, the bill provides a baseline mitigation formula of 1:1 replacement when forest is cleared (2:1 replacement when clearing priority forest).

SB 526 clarifies the review of “priority” forest areas to reduce harmful fragmentation of forest land.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 300,000 members and e-subscribers, including over 109,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

State law has long recognized that certain forested areas provide uniquely powerful benefits to people and nature. Unfortunately, these areas have been left vaguely defined and the existing statute provides little guidance to local environmental managers who must evaluate proposals for clearing them. Inconsistent regulation of priority areas often results in fragmentation, leaving the patches of forest that remain even more exposed to degradation and loss.

SB 526 defines five specific categories of priority forests, including those most critical for the well-being of urban communities, interior forest-dwelling birds, regional ecology, the state's highest-quality creeks and streams, and drinking water. The bill further provides an avenue for public participation in the decision to cut these priority forests, and clear criteria by which such proposals should be evaluated.

SB 526 offers new tools to help local governments and land developers mitigate forest loss.

Higher standards for offsetting forest loss are sorely needed – but so are additional options to meet them, especially in urban areas where space to replant is tight. SB 526 provides local environmental managers and land developers with mitigation options that are unavailable under existing law:

- **Preservation banking** where the forest conserved is otherwise at reasonable risk of loss due to development activity;
- **Restoration of degraded forest**, which include removal of invasive species, soil improvements, and other recognized best practices;
- Credit for planted **stormwater management** above and beyond state minimum requirements.

The bill adds these new tools to the existing mitigation sequence in the FCA, to be used at the discretion of the local government. These options can help keep the environmental benefits of woodlands and trees closest to the communities bearing the impacts of development activity.

SB 526 affirms existing processes and authorities to build a stronger and more flexible program.

The FCA is built on the premise that coordination between the state and local governments is the most effective way to manage the impacts of growth on Maryland's forests. SB 526 integrates new tools and standards into the law in a manner familiar to local governments and land developers. The bill:

- Utilizes existing DNR review and approval authorities for local program amendments;
- Relies on existing annual reporting requirements to track the performance of local programs;
- Clarifies and fills out existing concepts in the law including priority forest, mitigation banking, and alternative compliance measures.

CBF urges the Committee's FAVORABLE report on SB 526.

For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

FCA testimony 3-2-23 V 4 GA.pdf

Uploaded by: gary allen

Position: FAV



March 1, 2023

To: Senate Education, Energy and Environment Committee

From: Gary Allen, President, Maryland Forestry Foundation

Re: Support of SB 526

Mr. Chairman and members, I am Gary G Allen, President of Maryland Forestry Foundation.

I was chair of the Municipal League legislative committee when the original FCA bill was passed.

FAC was meant to stem the loss of tree cover, which had proceeded at a glaring pace in the 1980s when over 1000 acres a month were being lost. It was slowed but not eliminated, so two decades Later as Chair of the Sustainable Forestry Council we proposed a NO NET LOSS goal which the state accepted.

Earlier today, you learned No net loss has yet to be achieved!

We find that some of the tools provided in the FCA bill have resulted in expanded tree protection but still result in the loss of overall forest cover and tree cover loss. The foundation strongly supports the protection and preservation of existing forests and tree cover, but we think the use of that option has permitted forest loss in significant areas.

We need some new guardrails in the FCA to incentivize afforestation and reduce the value of preservation, specifically where the protected area is at low risk for development.

SB526 is drafted to bring that option into better balance.

Protection is an excellent option, but afforestation should be a priority in the face of site plans where significant loss of forest cover will occur.

The Bill, as drafted, does not provide new incentives for landowners to plant trees. That need must still be addressed; however, in the context of the Bill before us, a

new balance on the use of the tools provided in FAC to encourage both the planting of trees to replace those lost and the preservation of existing forest cover can be achieved.

The foundation asks for a favorable report on SB 526

Thank you.

FCA_SB526_AudubonMidAtlantic_.pdf

Uploaded by: Jim Brown

Position: FAV



Maryland Office
Patterson Park Audubon Ctr
2901 E. Baltimore St
Baltimore, MD 21214

March 2, 2023

To: Senate Education, Energy and the Environment Committee

From: Jim Brown, Policy Director, Audubon Mid-Atlantic

Subject: Favorable Testimony for Maryland **SB526 Natural Resources – Forest Preservation and Retention**

Good Afternoon. My name is Jim Brown. I am the policy director for Audubon Mid-Atlantic, here in Maryland. Audubon Mid-Atlantic is the regional office of National Audubon Society, representing over 35,000 Marylanders who advocate for the protection of birds, bird habitat, and policies aiming to protect both birds and human communities in the face of increasing environmental challenges, habitat loss, pollution and climate change.

Audubon Mid-Atlantic enthusiastically supports SB526 because it will protect one of Maryland's most important resources, our forests. Specifically, this bill protects birds. What is good for birds is good for all of us. This bill addresses the significant forest loss in our rapidly growing communities, by allowing local government solutions to protect forest and grow tree canopy coverage while meeting local development needs.

The Avian Science tells us birds are in decline due to habitat loss and habitat fragmentation. 1/3 of eastern forest bird species experienced significant population declines in the past 50 years. The rapid declines in birds signal the intensifying stresses that wildlife and people alike are experiencing in Maryland because of habitat loss and environmental degradation.

Taking action on forest protection brings back birds and delivers a cascade of benefits that improve climate resilience and quality of life for all Marylanders. When we restore forest, we filter our water, we sequester carbon, and create habitat for birds. Iconic birds such as – the Baltimore Oriole, Wood Thrush, American Kestrel, Brown Thrasher, Yellow Warbler, which are in decline across Maryland will benefit from this bill, as will people that get to see them.

The Science tells us:

- Maryland forests are becoming increasingly fragmented and diminished
- Fragmentation and forest loss leads to lower productivity in bird populations
- Restoring Maryland's forests will increase bird habitat and overall bird population health across our state.

SB526 will preserve and increase Maryland's tree canopy coverage, improve water quality in the our waterways, and support local community development in an eco-friendly way. SB526 will hold up Maryland as a leader habitat conservation, ecosystem preservation, and the protection of birds now and in the future.

Audubon Mid-Atlantic respectfully urges a favorable review of this legislation.

Thank You,

Jim Brown

Policy Director

Audubon Mid-Atlantic

410-207-2445

Jim.brown@audubon.org

SB 526 Testimony - IPC.pdf

Uploaded by: Jodi Rose

Position: FAV



*Forming Faithful Stewards,
Caring for Sacred Waters*

PO Box 6791
Annapolis, MD 21401

**Natural Resources – Forest Preservation and Retention
Senate Bill 526
FAVORABLE**

March 1, 2023

The Honorable Brian Feldman
Chair, Ed., Energy, Env. Committee
Maryland Senate
2 West
Miller Senate Office Building
Annapolis, MD 21401

The Honorable Cheryl Kagan
Vice Chair, Ed., Energy, Env. Committee
Maryland Senate
2 West
Miller Senate Office Building
Annapolis, MD 21401

Dear Chair Feldman, Vice Chair Kagan and members of the Education, Energy, and the Environment Committee,

On behalf of Interfaith Partners for the Chesapeake, I write to urge your support for the Natural Resources – Forest Preservation and Retention bill (SB 526) to advance this bill favorably from committee.

Maryland’s forest losses are staggering: 19,000 acres of forests lost in five years.¹ That’s the equivalent of losing 10 acres of forest every single day for five years. We all know forests are critical for sinking carbon, filtering pollutants out of the air, slowing down rains thereby reducing flooding, and fostering resilient ecosystems. So why are we allowing such loss of forests? In short, it’s because the laws that define and regulate forest conservation date back to 1991 and no longer address present-day circumstances and development pressures.

Senate Bill 526 will update and strengthen forest goals and definitions to provide clarity, reflect new data, protect and conserve more forest land and tree canopy, and give local governments significantly greater flexibility to pursue solutions that meet local development priorities and advance equity. Maryland’s Forest Conservation Act of 1991 is ill-equipped to address today’s challenges of climate change and watershed pollution and offers an unbalanced reforestation ratio of ¼-acre planted for 1-acre cleared.


Our network of congregations across the state are working hard to plant new trees on their properties, but we cannot keep up with the unsustainable pace of forest losses. **We need**

¹ According to Potomac Conservancy, “A recent study published by the Harry R. Hughes Center for Agro-Ecology of the University of Maryland found that Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018.”

Senate Bill 526 to address systemic failures of the 1991 Forest Conservation Act, so that individual efforts to plant trees are not made in vain.

Forests are “Creation’s Cure-All,” meaning they restore balance to the Earth in terms of cleaner water, cleaner air to breathe, flourishing ecosystem, home and habitat for birds and insects, holding the soil from erosion, a place to play, a place to pray. This is a gift entrusted to our care, and it is our responsibility to ensure we are preserving forests, not only for today, but also for tomorrow. **Please support Senate Bill 526 so that we can strengthen the laws designed to protect healthy forests.**

Sincerely,


Jodi Rose
Executive Director

SB526-FAV-AdvocatesForHerringBay.pdf

Uploaded by: Kathleen Gramp

Position: FAV

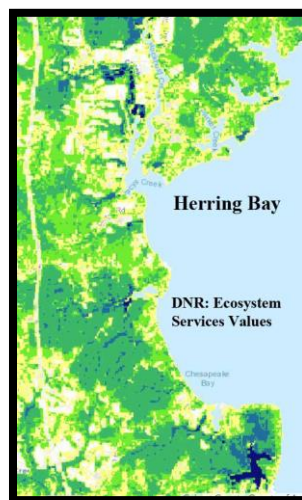
Testimony of the Advocates for Herring Bay¹
Regarding SB 526: Forest Preservation and Retention
Submitted by Kathleen Gramp, March 1, 2023
Favorable

The Advocates for Herring Bay strongly support enacting the forestry management reforms in SB 526. The bill offers a fresh approach to valuing Maryland's forest resources, one that builds on scientific evidence of their role in promoting the resiliency and health of our communities.

Without the reforms in SB 526, the Herring Bay area is at risk of losing forests that provide ecosystem services valued at an average of about \$2,000 *per acre per year*, according to estimates by the Department of Natural Resources (DNR).² The watershed's 7,000 acres of forest stabilize the area's steep slopes and wetlands, cleanse streams, nurture wildlife, and mitigate damage to property from flooding. For such reasons, DNR has designated a large portion of the Herring Bay area's forests as green infrastructure assets, as shown in the maps below.

In addition to broad measures strengthening forestry planning and management, SB 526 includes specific reforms that would aid conservation efforts in our area. For example, the bill would:

- Make certain forests a priority for retention, including those that are suitable for forest interior dwelling species, located in Targeted Ecological Areas, or in wellhead protection areas. Those provisions are especially important for the Herring Bay area since 40 percent of its green infrastructure currently is unprotected.
- Allow smaller properties to participate in certain DNR forest conservation programs. Lowering the eligibility threshold to two acres may lead to better protections for the wetland migration zones in Herring Bay that are rimmed by parcels that are too small to qualify for those incentives under current law. And,
- Apply the Forest Conservation Act to land used for electricity generation facilities, which would ensure that projects being built in Herring Bay and adjacent watersheds will be held to the same standards as other types of development.



¹ The Advocates for Herring Bay, Inc. is a community-based environmental group in Anne Arundel County.

² See DNR, [Accounting for Maryland's Ecosystems](#) and [Greenprint](#). Map values: green = \$900 to \$2,800 per acre per year; blue = \$2,700 to \$3,600 per acre per year.

2023 Written Testimony SB 526_Forest.pdf

Uploaded by: Kenneth Phelps, Jr.

Position: FAV



TESTIMONY IN SUPPORT OF SB 0526:

Natural Resources – Forest Preservation and Retention

****FAVORABLE****

March 2, 2023

TO: Hon. Brian J. Feldman, Chair, Hon. Cheryl C. Kagan, Vice Chair and the members of the Senate Education, Environment and Energy Committee

FROM: Albert H Todd, Member, Maryland Episcopal Public Policy Network, Diocese of Maryland

DATE: February 28, 2023

What if we asked our best engineers to build a machine that could remove pollution from the air and water, suck up CO₂ from the atmosphere, filter runoff and groundwater, cool our communities and reduce energy consumption; and, in addition, could do all these things without using any electricity or fuel, at minimal cost to operate and maintain, and be delivered in such a diversity of colors, shapes, and sizes, that almost any community would welcome the installation of such a machine in their neighborhood. They could not improve on a tree. Next to us humans, trees are one of God's most miraculous creations.

In our efforts to restore the Chesapeake Bay, we seem almost exclusively focused on fixing problems – many of which we have created by removing trees and forests from the land! We need to pay attention to conserving those parts of our watershed that already protect our waters—like those marvelous natural machines -- our forests.

Since you woke up today, we lost 10 acres of forest in Maryland. Tomorrow we will lose another 10 acres and so on and so on each day into the future. This rate of loss has declined from a decade ago according to recent studies, but it is still far too much, too fast. It will soon be impossible to maintain healthy streams, restore our Chesapeake Bay, or maintain our own health in the face of this loss of forest lands.

The science is clear; with each acre of forest converted to other uses, we increase the nitrogen and phosphorus pollution into our waterways, we reduce our health, and we diminish habitats. While planting new trees is a worthy investment, it is difficult to replace existing mature healthy forests. It is like walking up a down escalator. We can hardly add enough trees to offset the losses. We continue to lose ground.



Forest clearing has significant negative impacts on water quality, air quality, biodiversity, carbon sequestration, property values, and increases localized flooding. In and around our cities, tree canopy may be the single most practical strategy for adjusting to the serious effects of warming due to climate change. For our waters, buffers of forest along streams are one of our most effective means to fight warming temperatures and reduce pollution. The State of Maryland acknowledged all of this when it passed the landmark Forest Conservation Act in 1992. This progressive legislation is unlike any other in the nation, and the State is to be commended for its far-reaching vision. But, the FCA is flawed and not always enforced, making it hard to achieve its true intent.

The Natural Resources – Forest Preservation and Retention Bill will clarify and strengthen the FCA and its protections for forests while increasing the total acreage of forest.

The faith community has been actively engaged in advocacy for previous forest conservation actions taken at the State and local level. The faith community shares a deep connection with trees through scripture and in spiritual practice and have planted thousands of trees on their properties and in their communities. Forests are a special part of God's creation left to our care. Our inability to stem the loss of forests now, is stealing this critical resource from our children. We urge support for the stronger restrictions on the clearing of forests and the requirements for mitigation of loss due to development as well as using forests more effectively to improve our air and water.

The Diocese of Maryland supports a favorable outcome and passage of this Bill.

SB0526 Forest Retention February 2023.pdf

Uploaded by: Kurt Schwarz

Position: FAV



March 2, 2023

Committee: Education, Energy, and the Environment

Testimony on: SB0526– Natural Resources – Forest Protection and Retention

Position: Support

The Maryland Ornithological Society (MOS) strongly supports SB0526 and requests a favorable report from the Education, Energy, and the Environment Committee.

SB0526 will update the Forest Conservation Act (FCA) of 1991, which has been found to be inadequate to protect Maryland's priority forests or forest canopy goals. HB0273 will strengthen forest goals and definitions, which will preserve more forest land and tree canopy, while giving local governments more flexibility to help meet local development issues.

A study commissioned by the General Assembly in 2021, Maryland suffered a net loss of over 19,000 acres of forests between 2013 and 2018.¹ Forest losses continue as does forest fragmentation. This is particularly acute in suburban counties.

Forests are very important for mitigating the continuing decline in our bird populations. A recent, much-cited, study has shown that North America has lost 3 billion birds, 29% of its total population, since the 1970s.² Eastern forest bird populations have fallen by 27% since 1970. Aside from forest clearing, fragmentation is another threat. Many species require large, unbroken blocks of forest. Intact forests also serve to sequester carbon, a major factor in climate change. Climate change is yet another factor threatening our bird populations. Two-thirds of North America's birds face an increasing risk of extinction from global warming, 389 species are at risk.³

Birds provide important ecosystem services, such as pollination, pest control, seed dispersal. Meanwhile, birding itself contributes significantly to Maryland's economy. An estimated 900,000 residents and non-residents enjoy birding in the state. While Marylanders generated \$483 million from wildlife-watching activities in 2011, the Total Industrial Output (TIO), which includes, direct, indirect, and induced effects, totaled over \$909 million, produced 10,807 full- and part-time jobs, and generated \$88.4 million in state and local tax revenue. Nationally, Americans who watch and feed birds contribute \$41 billion to the nation's economy every year.⁴

Lastly, retention of forest, and ideally, increase in forest cover, in the Chesapeake Bay watershed has been recommended for over 30 years as one of the most effective means of reducing pollutant runoff to the estuary. Forests also absorb runoff and play a major role in controlling flooding, a growing concern in this time of climate change. Reduction of non-point source pollution will have major benefits

for wildlife, including birds, fisheries, the economy of Bay communities and for Maryland itself.⁵ Forested riparian buffers are also low-tech but effective means of reducing runoff from farms.

In conclusion, MOS believes that an update to the FCA, which will better protect Maryland's priority forests and expand our tree canopy to the benefit of our birds, is very much needed. We ask the Committee to issue a favorable report on SB0526.

Sincerely,

Kurt R. Schwarz
Conservation Chair Emeritus
Maryland Ornithological Society
www.mdbirds.org
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Columbia, MD 21046
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¹ Wheeler, Timothy, Maryland still losing forest and trees, though at a slower rate, study finds, Bay Journal, Nov. 18, 2022, https://www.bayjournal.com/news/growth_conservation/maryland-still-losing-forests-and-trees-though-at-a-slower-rate-study-finds/article_b1ddd3b0-675e-11ed-9ea9-072671365ff9.html

² Rosenberg, et al, Decline of the North American Avifauna, Science, vol 366, issue 6461, pp. 120-124, 4 October 2019, https://www.researchgate.net/publication/335939269_Decline_of_the_North_American_avifauna

³ State of the Birds, 2022, Key Findings, <https://www.stateofthebirds.org/2022/state-of-the-birds-at-a-glance/>

⁴ US Fish and Wildlife Service, Economic Impact: Birds, Birdwatching and the U.S. Economy, November 16, 2017, <https://www.fws.gov/birds/bird-enthusiasts/bird-watching/valuing-birds.php>

⁵ Forest Service, United States Department of Agriculture, Chesapeake Forest Restoration Strategy, September 2020, https://d18lev1ok5leia.cloudfront.net/chesapeakebay/cst91_chesapeake_forest_restoration_strategy_web_508_final.pdf

TEST SB 526 Forest 23_pdf.pdf

Uploaded by: Lani Hummel

Position: FAV

TO: Senate Committee on Education, Energy, and the Environment
Natural Resources – Forest Preservation and

TESTIMONY on: SB 526 – Retention
POSITION:

FAVORABLE HEARING DATE: March 3, 2023
I purchased my home in 2001. The house was nothing special, but the trees were spectacular, both on my property and in the woods and forests in the surrounding community. My plan was to fulfill a lifelong dream of creating my own bird sanctuary. After much hard work, I attracted many birds to my garden. I needed 17 bird feeders that I refilled every day to satisfy my feathered visitors. Then the developers came and the trees and forests began to disappear. As a result, my birds began to disappear as well. Now, I use two bird feeders which I need to refill only once a week. The beautiful bird songs I loved so much have been largely replaced by traffic noise, much more prominent with fewer trees to muffle it. Not long ago, a fellow bird lover who lives in Charles County, came to my house in Annapolis for the first time. When I gave her my address, she said, “Forest Drive, that sounds lovely!” I did not respond. When she arrived, the first thing she said was “Why do they call it Forest Drive?” Good question... The loss of trees and forests is not merely a matter of degradation in the quality of life for bird lovers. Trees and forests are important in our efforts to mitigate the negative impacts of climate change, already apparent in our daily lives and increasing at an alarming rate. The 1991 Forest Conservation Act is woefully inadequate to minimize forest loss and fragmentation. The reforestation of a quarter acre planted for each acre cleared is not sufficient. In addition, protections for the state’s most valuable priority forests leave many vulnerable to removal. We can never forget that every tree lost makes our battle against climate change more daunting. And an exception here, a variance there add up to a significant loss. According to the Harry A. Hughes Center for Agro-Ecology of the University of Maryland, Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018. Such a loss is unsustainable if we want a better future for our children and grandchildren. I urge you to issue a FAVORABLE report on SB 526 because this legislation will strengthen and update forest goals and definitions to provide clarity and reflect new data, protect and conserve more forest land and tree canopy, and give local governments significantly greater flexibility to pursue solutions that meet local development priorities and advance equity. Thank you for your consideration,
Lani Hummel
Annapolis Roads

sb526- forest preservation- EEE 3-2-'23.pdf

Uploaded by: Lee Hudson

Position: FAV



Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony Prepared for the
Education, Energy, and the Environment Committee
on
Senate Bill 526
March 2, 2023
Position: **Favorable**

Mr. Chairman and members of the Committee, thank you for the opportunity to testify for care of the gifts of creation. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America. We are a faith community in three judicatories across our State.

We teach that care of creation is an act of devotion and gratitude for the benediction of natural gifts. We believe responsible stewardship of natural gifts is an ethical mandate of gratitude. We are called to preserve what is, conserve what is needed, and restore what has been spoiled.

Forest integrity and extent in Maryland was a stated interest of our community in 2008 (LOPP/MD testimony before *EHEA*, Feb. 28, 2008 on *SB431*). The environment is a public good that must be protected in all its public spaces.

Senate Bill 526 improves present Maryland care of its natural gifts. It strengthens the work of preservation by gathering more trees into the regulatory definition of “forests” and increasing conserved acreage. The benefits of better policy will accrue to the entire land labeled “Maryland;” its air, watersheds, soils, and species including the human one.

We support such a policy. We support care and preservation of created gifts. We support a favorable report.

Lee Hudson

HB723 2023 Sierra Club 1March2023 questions.docx (

Uploaded by: Lily Fountain

Position: FAV

Committee: Environment and Transportation**Testimony on: SB526 “Natural Resources – Forest Preservation and Retention”****Position: Support****Hearing Date: March 1, 2023**

The Maryland Chapter of the Sierra Club strongly supports SB526 “Natural Resources – Forest Preservation and Retention”. This bill updates definitions and goals for the Forest Conservation Act. The goal to increase the retention and sustainable management of forest lands is changed from no net loss of forest to increasing the acreage of forest and tree canopy per the recommendations of the General Assembly mandated study, the Technical Study on Forest Cover and Tree Canopy in Maryland, also known as the Hughes Report.¹

This report was released just before this General Assembly session and identified changes in the amount of forest and individual trees and clusters (tree canopy):

-Net loss of forest in 20 counties: Calvert, Allegheny, Prince George’s, Montgomery, Charles, Anne Arundel, Washington, Howard, Cecil, Baltimore City, St. Mary’s, Caroline, Harford, Baltimore County, Frederick, Dorchester, Kent, Carroll, and Talbot counties. The number of acres lost varied from a high of nearly 6,000 acres in Prince George’s County, to the lowest net loss of 31 acres Talbot. Four counties gained forest: Queen Anne, Wicomico, Worcester, and Somerset, ranging from 2 acres to over 3,100 acres. If tree canopy, or individual trees or clumps over 10 feet tall are included as well as forest, the number of counties with increased forest canopy was 10 (Table 12).

-Inadequate restoration of forest after development: When development occurred over the five years studied, forest mitigation banking programs throughout Maryland either planted trees or preserved existing forest. However, following the Attorney General’s decision to no longer permit the establishment of retention banks in order to preserve accuracy, the system is in change since those make up the majority (81%) of all reported bank acreage in the state.

These losses are a critical problem for Marylanders since our forests provide many benefits. Historically, few ecosystem service benefits of forests had clearly established monetary values.² If a forest was logged, only the monetary value of the timber was considered; only recently have the goods and services provided by the forests been given a monetary value. There is now greater recognition of the value of forests in absorbing air pollutants such as carbon monoxide, ozone, and particulate matter; reducing stormwater runoff; and offsetting carbon dioxide emissions. Maryland’s Department of the Environment reported in the Maryland Forest Carbon inventory that forests offset 14.8% of state emissions.³

¹ Harry R. Hughes Center for Agro-Ecology, University of Maryland College of Agriculture & Natural Resources, Chesapeake Conservancy, & University of Vermont (November, 2022). [Technical Study on Changes in Forest Cover and Tree Canopy in Maryland.](#)

² The Wilderness Society (2001). [Economic Value of Forest Ecosystem Services: A Review.](#)

³ Maryland Department of the Environment (2017). [Maryland Forest Carbon Inventory.](#)

Because of the many documented benefits of forests, Bill SB526 designates the following types of forest areas as priority forests that are not to be disturbed unless a project is determined to qualify for a variance:

1. Forest land suitable for forest-interior-dwelling species (FIDS) habitat and forest corridors connecting these forest patches.
2. Forest land located in a targeted ecological area as identified by the Department of Natural Resources.
3. Forest located in a Tier II or Tier III high-quality watershed as identified by the Department of the Environment.
4. Forest located in a Water Resource Protection Zone, a reservoir, watershed, or a Wellhead Protection Area as identified by a local jurisdiction.

Importantly, SB526 increases the ratio for reforestation required to replace forest lost to development from 1 acre reforested for every 4 acres removed to 1 acre reforested for every acre removed (a 1:1 ratio) unless an alternate management approach is developed by a local government and approved by DNR that maintains the same amount of forest when viewed over a 2-year period. The bill also clarifies the provisions regarding the use of mitigation banks so that only areas with development potential are designated as qualified conservation areas and that their permanent protection only provides 50% credit towards meeting replacement requirements. These measures should enable Maryland to move toward net gain of forest canopy, as well as equalize the differences between counties in forest canopy change over time, while allowing more flexibility to jurisdictions to meet the new parameters. Finally, equity concerns are addressed by identifying measures to increase tree canopy in urban areas.

For all of these reasons, the Maryland Chapter of the Sierra Club strongly supports this bill and recommends your favorable report.

Lily Fountain
Chair, Natural Places Committee
Lily.Fountain@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

Written support for SB 526 - Forest Preservation (

Uploaded by: Marisa Olszewski

Position: FAV



Kim Coble
Executive Director

March 2, 2023

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SUPPORT: SB 526 - Natural Resources - Forest Preservation

Chairman Feldman and Members of the Committee:

Maryland LCV is grateful for Senator Elfreth's leadership for introducing SB 526 in recognition of our need to renew our forest preservation goals and update our methods for protecting and increasing our forest cover. Trees and forests provide an enormous value to our state, however our current policy for forest conservation has been inadequate in accounting for these benefits when permitting the removal of trees and forest acreage. As a result we must update our existing systems as we strive to balance forest conservation amidst the ever present pressures of development. SB 526 will improve our ability to preserve forest in Maryland and moves us towards the necessary goal of a net gain of forest acreage. For this reason, Maryland LCV is pleased to support SB 526.

Last year, the Harry R. Hughes Center for AgroEcology released the "Technical Study on Changes in Forest Cover and Tree Canopy in Maryland." The study found loss of forests to be greatest in central Maryland, especially in areas adjacent to Washington D.C., and that overall, the state had yet to achieve our state's goal of "no net loss." SB 526 offers an appropriate response to this documented forest loss in our state and will provide the necessary update to Maryland's Forest Conservation Law.

SB 526 will:

1. **Set clear goals and metrics to reach a net gain forest cover**, as well as tree canopy cover - leaving flexibility for urban and suburban jurisdictions.
2. **Protect priority forests** and reduce forest fragmentation.
3. Establish clear and appropriate definitions of the terms forest and tree canopy.
4. Differentiate replanting ratios for different land uses.
5. Affirm the value of street trees and support gains in urban canopy cover.

Why do we need to protect our forests? Ecologists have found that a single oak tree can provide food for over 500 different types of caterpillars and its acorns are eaten by more than 100 different animals. There is no question trees and forests are essential habitat for wildlife, but they are also essential for people. Trees provide a vast array of ecosystem services, including:

Reducing urban heat island effect¹.

- Trees provide shade, which can keep temperatures as much as 20–45 degrees F cooler than unshaded surfaces.
- Trees also provide evaporative cooling effect from their ecological process of evapotranspiration² (the absorption of heat while releasing water vapor).
- Trees provide much needed cooling, greenspace, and air quality improvements in areas that have faced decades of disinvestment.

Removing pollutants from stormwater³

- Both forests, with immense water storage capacity, but also urban street trees, are important for their abilities to move stormwater and the excess nutrients it carries into storage in the soil.⁴

Removing pollutants from the air⁵.

- The US Forest Service reported trees in 11 parks in the National Capital area remove more than 1.1 million metric tons of air pollutants annually.⁶
- A study of tree canopy in New York City determined a tree cover increase of just 10% provided more than a third of the reduction needed to achieve air quality standards.⁷

Mitigating greenhouse gas emissions

- Preserving forests is one of the most effective and least expensive mitigation measures for absorbing greenhouse gas emissions. Ten acres of mature trees sequester about 8-10 tons of carbon annually⁸ (or the equivalent carbon dioxide emitted from a gas-powered car driving more than 22,000 miles).

Supporting vital human health outcomes

- A 2022 World Wildlife Fund report investigated the many researched connections between human health and forests. The report found exposure to forests reduced incidences of infectious diseases and noncommunicable diseases like cancer, reduced diabetes and cardiovascular disease, and supported good mental health.⁹

Trees and forests are essential to our health while also supporting a myriad of positive environmental goals. It is imperative that we update our Forest

¹Urban heat island effect occurs as hardened surfaces, like pavement and buildings, absorb heat by solar radiation, then radiate that heat back into the air. Temperatures in urban neighborhoods can differ by as much as 20 degrees Fahrenheit due to this effect (<https://www.heat.gov/pages/urban-heat-islands>).

² <https://www.epa.gov/heatislands/using-trees-and-vegetation-reduce-heat-islands>

³ Stormwater is a growing source of pollution to the Chesapeake Bay.

⁴ <https://www.nature.com/articles/s41598-021-01804-3>

⁵In 2020, even with traffic reduced due to COVID-19 pandemic restrictions, EPA data showed Baltimore experienced 43 days of elevated air pollution. (<https://insideclimatenews.org/news/19102021/air-pollution-baltimore/>)

⁶ <https://www.nps.gov/articles/000/uerla-trees-air-pollution.htm>

⁷ [Trees at Work: Economic Accounting for Forest Ecosystem Services in the US South](#), Chapter 4. Forest Ecosystem Services: Carbon and Air Quality. Nowak, David J., Poudyal, Neelam C. and Steven G. McNulty. (51.) Accessed from: https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs226/gtr_srs226_ch4.pdf

⁸ <https://www.sunjournal.com/2021/06/11/energy-matters-does-your-10-acres-cover-your-carbon-footprint-2>

⁹ <https://www.worldwildlife.org/press-releases/new-report-demonstrates-strong-scientific-link-between-forests-and-human-health>

Conservation Law with SB 526 to reduce forest fragmentation and work toward a new goal of a net gain of forests in Maryland. Maryland LCV urges a favorable report on this bill.

SB 0526 Chesapeake Bay Commission Written Testimon

Uploaded by: Mark Hoffman

Position: FAV



CHESAPEAKE BAY COMMISSION

Policy for the Bay • www.chesbay.us

Written Testimony

Bill Number/Title: SB 526 / Natural Resources – Forest Preservation and Retention
Committee: Environment and Transportation
Hearing: March 2, 2023
Position: Support

The Chesapeake Bay Commission is a tri-state legislative commission created by law in Maryland, Pennsylvania, and Virginia to advise the members of the three general assemblies on matters of watershed-wide concern. Its fundamental purpose is to assist each assembly and the U.S. Congress to develop legislation and policies that foster the collaborative and practical restoration of the Chesapeake Bay and its watershed.

Position

The Maryland legislative members of the Commission support HB 723, including any amendments offered by the sponsors.

Background

The protection and expansion of forest and tree canopy are critical to the restoring the health of the Chesapeake Bay for the benefit of the watershed's citizens. Natural forests are the most effective and least expensive means to capture rainwater and limit the pollutant loads from stormwater runoff. Additionally, forests (and tree canopy in non-forested landscapes) are a sink for atmospheric carbon and provide public health benefits. Forests and forest buffers along waterways provide a buffer for the impacts of flooding.

The General Assembly has addressed forest conservation for decades, both in providing incentives to preserve forest, and limitations on their removal. In response to efforts to strengthen the state's Forest Conservation Act, legislation was passed in 2019 and 2021 to require an assessment of forest and tree canopy in Maryland – given what were then disagreement about the status and health of the state's forested land. The results of this analysis, coordinated by the Harry R. Hughes Center for Agro-Ecology were released in late-2022.

The Hughes study made the following key findings:

- Although the rate of forest lost has slowed in recent years, we continue to (net-net) lose acres of forest each year.
- The rate of forest loss is very uneven across the state, with jurisdictions in the central part of Maryland experience much higher rates of forest and tree canopy loss than the state-wide average.
- The fragmentation of existing forests continues to be a significant concern.
- Given the right policy tools and incentives, the potential exists to reverse this trend, and create an environment where forest and tree canopy are increasing each year.

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Additionally, in recent years multiple counties have taken the policy lead in enacting local ordinances to strengthen forest conservation above the minimums of existing state law. SB 526 builds upon these efforts.

Summary of Legislation

SB 526 reflects the findings of the Hughes study by making policy actions that will turn the tide on forest loss in Maryland. Specifically, it does the following:

- Updates our state goal to be one of increasing forest and tree canopy cover over time.
- Makes the formal definitions consistent with the methods used by the Chesapeake Bay Program to assess forest and tree canopy cover.
- Strengthens the requirements of the Forest Conservation Act, while at the same time giving local governments and the development community significantly greater flexibility to pursue solutions that meet local needs and advance equity.
- Increases the protection of priority forest and reduces forest fragmentation.
- Allows for the use of existing forest for mitigation – but only when that forest is under potential threat.
- Narrows utility generation exemption to apply only to transmission infrastructure.
- Makes certain smaller forested areas eligible for forest management plans and associated incentives.

Collectively, these changes will contribute to an increase in forest and tree canopy in Maryland, while at the same time increasing the ability of local governments to structure programs to meet local concerns.

Contact:

Mark Hoffman

Maryland Director

Chesapeake Bay Commission

mhoffman@chesbay.us

SB526_Testimony_ShoreRivers_SUPPORT.pdf

Uploaded by: Matt Pluta

Position: FAV



Testimony in SUPPORT of SB 526 – Natural Resources – Forest Preservation and Retention

March 1, 2023

Dear Chairman Feldman and Members of the Committee,

Thank you for this opportunity to submit testimony in **SUPPORT** of **SB 526** on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with more than 2,000 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration, and education.

Maryland loses about 3,000 acres of forest every year. Forest clearing contributes to poor water quality, fragmentation and loss of wildlife habitat, reduced carbon sequestration, air pollution, increased temperatures, localized flooding, and lower property values. On the Eastern Shore of Maryland, where more than 60% of all land use is shaped by agricultural activities, the negative impacts of irresponsible forestry on an already under forested landscape are more acute, as are the impacts to local water quality.

Forests and trees offer tangible benefits to the state's economy by contributing an estimated \$3.1 billion per year in flood prevention and stormwater mitigation, an estimated \$140 million per year in reducing air pollution and \$246 million per year in surface water protection (Campbell et al. 2019). These are costs that the state would need to pay if it were to develop and apply technologies to serve these functions.

The outdoor recreation industry is significant to Maryland's economy, contributing \$14 billion per year (Outdoor Industry Association 2017). Currently, the 1.5 million acres of protected land in Maryland (much of which is forested) generates \$4 billion annually (Campbell et al. 2019). At the local individual property level, one large tree can eliminate up to 5,000 gallons of stormwater runoff per year and reduce building energy costs by 15-35% for homes and business owners (State of Maryland 2019).

Trees are one of the most positive long-term investments that can be made to improve water quality in the Chesapeake Bay, and many of our trees are threatened by the ongoing effects of climate change, as well as development activities within our watersheds. **This bill will update forest goals and definitions to provide clarity and reflect new data, protect and conserve more forest land and tree canopy, and give local governments flexibility to pursue solutions that meet local needs and advance equity goals.**

We support this bill for increased forestry education and resources, and urge the Committee to adopt a **FAVORABLE** report on **SB 526**.

Sincerely,

Zack Kelleher

Sassafras Riverkeeper, on behalf of ShoreRivers

Natural Resources – Forest Preservation and Retention (SB526)

Submitted On February 27, 2023

By: Georgeanne Pinkard

ShoreRivers

Isabel Hardesty, Executive Director

Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper | Zack Kelleher Sassafras Riverkeeper

shorerivers.org | 443.385.0511 | info@shorerivers.org

312 Quarter Creek Drive
Queenstown, Md 21658

To Senators: Elfreth, Guzzone, Gile, Hester, Kramer, Lam, Hettleman, M. Washington, West, and Zucker.

My name is Georgeanne Pinkard I live in Queenstown, Md, I am a Master Naturalist; Arborist and I serve on the Watershed Advisory Board for Shore Rivers. I support SB526.

Maryland is approaching a goal of achieving “no net forest loss”. This is after losing almost 19,000 acres between 2013 and 2018. We are now at a pivotal point where private and governmental tree planting programs can tip the scale toward forest gain. I am personally looking forward to supporting “5 Million Maryland Trees for Climate Progress”.

Though there are many successful afforestation and reforestation programs in effect, I believe it takes a unified and consistent message from our legislators that deforestation on any level has a direct impact on both the environment and human health. On a local level I am witnessing developers seeking variances to develop land that is designated as critical area and wetlands. This is clearly not the intent of these zoning classifications. I am also seeing my neighbors, new to the area, removing dozens of trees within the floodplain, with or without permits. If only they could get to know the woodland residents before destroying their home – Barred Owl, Great Horned Owl, fox, songbirds and small mammals.

Though forestation and fragmentation of tree canopy fluctuates throughout the state, approximately 39-42% of land in Maryland remains in forest. Of that only 33.2% is considered state protected land. As interpreted by an ambitious speculator, protected land means a frivolous law meant to be broken. That is why supporting SB526 is important because it combines existing regulations under the Forest Conservation Act with new data from the Harry Hughes Center assessing the current health of Maryland’s forest.

As population and development continues to spread throughout Maryland, land use regulations will also continue to be challenged. SB526 will help our local officials define, create and preserve areas of forestation for both wildlife and residential communities to enjoy. Once cleared, a new forest takes decades to mature. Maryland already has one of the most impressive GHG emission reduction plans in the nation. I ask for your support of the Forest Preservation and Retention bill to keep Maryland in the forefront of creating a decarbonized future! Thank you!

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Uploaded by: Renee Hamidi

Position: FAV



Regarding SB0526: Forest Preservation and Retention
Submitted by Renée Hamidi, executive director of The Valleys Planning Council
March 1, 2023
Favorable

The Valleys Planning Council supports enacting the forestry management reforms in SB 0426.

Changing the State's policy of achieving no net loss of forest to increasing the acreage of land that is forest land or covered by tree canopy clearly shows how important forest land is to the state.

Reducing the number of contiguous acres of woodland to place land in the Forest Conservation and Management Program will encourage more landowners to take advantage of the program.

Requiring land used for electricity generation facilities abide by the Forest Conservation Act ensures that these projects will be held to the same standards as other kinds of development.

The Valleys Planning Council is a community organization dedicated to conserving land and resources, preserving historic character and maintaining the rural feel and land uses in northwestern Baltimore county.

Elfreth_FAV_SB526.docx.pdf

Uploaded by: Sarah Elfreth

Position: FAV

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Pensions

Chair, Public Safety,
Transportation, and Environment

Joint Committee on the Chesapeake and
Atlantic Coastal Bays Critical Area

Chair, Joint Subcommittee on
Program Open Space/Agricultural
Land Preservation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 2, 2023

Testimony in Favor of SB0526
Natural Resources - Forest Preservation and Retention

Chairman Feldman, Vice-Chair Kagan, and members of the Education, Energy, and the Environment Committee:

I respectfully request a favorable report of Senate Bill 526 – which at its core, has the fundamental goal of ensuring that we are properly valuing our forests and reversing the unsustainable trend of forest and tree canopy loss across Maryland. SB526 seeks to update the State’s antiquated and convoluted approach to forest preservation by creating a true no-net loss standard across the State AND provide greater flexibility to our local partners in achieving this higher standard.

As this Committee is well aware, forests and tree canopy remain critical to restoring the health of the Chesapeake Bay and creating a healthier air quality for Marylanders. Natural forests remain the most effective and least expensive means to capture rainwater and limit the pollutant loads from stormwater runoff. Furthermore, forests and forest buffers along waterways provide an important buffer for the ever-increasing impacts of flooding. Forests (and tree canopy in non-forested landscapes) are also a sink for atmospheric carbon and continue to provide overall public health benefits such as lower temperatures and lower rates of asthma in communities.

Recognizing this importance, this Committee and the General Assembly have previously taken important actions to protect and restore our forests and tree canopy here in Maryland including the Forest Preservation Act of 2013 and the Tree Solutions Now Act of 2021. Yet, we have not updated the Forest Conservation Act since 1991 - over 30 years ago. The FCA created a floor by which our local partners can protect forest. With that in mind, I was proud to work with other members of the General Assembly to fund a study from the Hughes Center for Agro-Ecology to

better understand where we are as a State with regards to forest loss and trends that must be considered.

As you all heard earlier in the technical study briefing by the Hughes Center, there were several key findings, including:

1. Although the rate of forest loss has slowed in recent years, we continue to lose acres of forest each year.
2. The rate of forest loss is uneven across the state, with jurisdictions in the central part of Maryland experiencing much higher rates of forest and tree canopy loss than the state-wide average.
3. The fragmentation of existing forests continues to be a significant concern.
4. Given the right policy tools and incentives, the potential exists to reverse this trend, and create an environment where forest and tree canopy are increasing each year.

Seeing this continued loss of forest - we must act to reverse this trend, and we have the perfect opportunity now to do just that and build upon the work that many of our local jurisdictions have already done since we have not updated our law in over 30 years. This legislation will revamp the Forest Conservation Act in a variety of ways:

This legislation will redefine forest as well as define tree canopy. In doing this we are matching the definition of these two terms to the definitions used by the Chesapeake Bay Program to create more cohesiveness between the Bay Program and our work here at a State level here in Maryland.

This legislation will meaningfully update our forest goals as a State from no-net loss to instead increasing the acreage of land in the State covered by forest land or tree canopy. In doing this we are utilizing the new definitions of forest land and tree canopy to create two related but equally important goals. Furthermore, this new language sets forth that we should measure ourselves on this goal every four years. (Page 3 Lines 18-22)

It is also critically important that the two provisions of the legislation discussed thus far are not connected to the FCA. The remainder of the pieces of the legislation are updates to the FCA and are separate but equally important to the aforementioned items.

This legislation will give our localities increased flexibility in meeting the requirements as required under the FCA by giving Counties the option to create their own alternative afforestation, reforestation, and preservation requirements – so long as they result in the local at a minimum maintaining their existing level (no-net-loss) of forest cover. Under this legislation, if a County were to create their own plan instead of the new ratios in law, then that plan would need to be approved by DNR.

SB526 also reauthorizes the use of forest mitigation banks that became unauthorized under an opinion issued by the Attorney General. Without this Bill, counties will be unable to utilize forest mitigation banks beginning in 2024. Lastly, this legislation will provide local governments with the flexibility to employ other mitigation options when space to replant is tight.

This legislation also importantly updates replanting ratios under law only if a County does not create their own plan as authorized and better define priority forest land to further protect the most important forests.

On energy generating systems and their FCA requirements, this legislation will narrow the current exemption from the FCA for public generating systems. In doing so, the transmission lines themselves are still exempt but the energy generating structure itself would not be. This is a struggle that our neighbors in Virginia are dealing with as there continues to be clear cutting of forests to place large renewable energy structures. I think that this Committee would agree that it is counterintuitive to destroy forests to develop clean energy. Removing this exemption will prevent such a trade-off.

This legislation will also provide important tax incentives to landowners who wish to enter into a Forest Management Program with DNR by lowering the minimum acreage required to enter into the program from 5 to 2 acres.

After over two dozen individual stakeholder meetings with MACO, individual counties including Prince Georges, Charles, and Montgomery, DNR, representatives of the building industry, and others – we are still working to find common ground and are offering the following amendments:

1. Mitigation Banking

Expand criteria for existing forest to be included in mitigation banks by allowing local jurisdictions to designate priority forests for conservation that can then be used for mitigation; require approval by DNR; and cap the total amount allowed.

2. Variance Requirements (Requested by MACo and Prince George's)

Move additions to the actions that would require a variance to allow administrative approval, but in addition require notification and written findings provisions.

3. Update to FCA Manual and Program Outreach

Require the Department to update the FCA manual and do so every 5 years thereafter and provide guidance/outreach to local jurisdictions

4. Restoration of Degraded Forest (requested by Baltimore City)

Clarify that the restoration of degraded forest: (1) already encumbered by a conservation easement and (2) off-site - would count for meeting mitigation requirements.

5. Move back implementation date

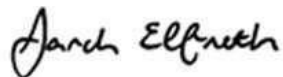
Provide for implementation timetable to allow local jurisdictions and DNR to update local forest conservation ordinances and technical guidance.

6. Use of Forest Conservation Fund (requested by Frederick County)

Extend provisions related to mandatory use of Forest Conservation Fund dollars from 2 years or 3 growing seasons to 5 years or 6 growing seasons.

You will hear from today from experts as well as the advocacy community who recognizes the critical importance of this legislation. We will continue to work with stakeholders to find common ground here and I once again respectfully request a favorable report of Senate Bill 526.

Sincerely,

A handwritten signature in black ink that reads "Sarah Elfreth". The signature is written in a cursive, flowing style.

Sarah Elfreth

SB 0526_IndivisibleHoCoMD_FAV_VirginiaSmith.pdf

Uploaded by: Virginia Smith

Position: FAV



SB526 – Natural Resources – Forest Preservation and Retention

Testimony before

Senate Education, Energy, and the Environment Committee

March 2, 2023

Position: Favorable

Mr. Chair, Mdm. Vice Chair and members of the committee, my name is Virginia Smith, and I represent the 750+ members of Indivisible Howard County. We are providing written testimony today in **support of SB526**, which would alter the meaning of “qualified conservation” and establish and add different methods for afforestation, reforestation, and preservation requirements. Indivisible Howard County is an active member of the Maryland Legislative Coalition (with 30,000+ members). We appreciate the leadership of Senator Elfreth in sponsoring this important legislation.

Forests are a necessity. They prevent erosion, enrich and conserve soil, lessen flooding impacts and decrease the risk of diseases. They are the second-largest holder of carbon after the oceans. Spending time in forests provides physical and mental health benefits for people. They also preserve essential habitat for native plants and animals, which helps ensure biodiversity. This bill will ensure that we preserve and grow the forests that we currently have in Maryland. It will require that each acre of forest cleared be reforested at a ratio of 1 to 1, except existing priority cover, which will require reforestation at a 2 to 1 ratio. It also allows local jurisdictions to develop and propose alternative plans for afforestation, reforestation, and preservation, which will help different areas be nimble with their preservation.

For these reasons, we support SB526.

Thank you for your consideration of this important legislation.

We respectfully urge a favorable report.

Virginia Smith
Columbia, MD 21044

SB526_PGCEX_FWA.pdf

Uploaded by: Andrea Crooms

Position: FWA



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: Senate Bill 526 - Natural Resources – Forest Preservation and Retention

SPONSOR: Senators Elfreth, *et al.*

HEARING DATE: March 1, 2023

COMMITTEE: Environment and Transportation

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT WITH AMENDMENTS

The Office of the Prince George's County Executive **SUPPORTS WITH AMENDMENTS** Senate Bill 526 - Natural Resources – Forest Preservation and Retention.

General Comments and Position Summary

Prince George's County supports the core tenets of this bill, as well as its goals and objectives. We appreciate the recognition that forest retention banks have environmental value, and support returning existing forest banks to the Forest Conservation Act's toolbox as a mitigation strategy. We support retaining forest and increasing canopy, and we do agree that outside of the areas where development should be encouraged, the ratio of ¼ to 1 may be insufficient to retain canopy.

However, the bill fails to consider the need to balance transit oriented and smart development, especially efforts along the Blue Line Corridor that have recently been funded by the State, and neglects to mention the impact of environmental injustices and systemic under-investment in our County, and other similarly situated Counties and Municipalities. It takes the ability to control our future development, and to ensure that critical commercial investment, that will bring in the revenues required to support long-term conservation strategies that improve the quality of life for our residents (and our wildlife) into account. The bill as written potentially threatens the effective development of core Blue Line Corridor, Purple Line, and New Carrollton development, as well as the two preferred site locations for the FBI building.

In addition, the bill is overly broad, attempting to both reform the FCA and also define standards and goals around Tree Canopy and Urban Tree Canopy. We strongly support increasing the tools in our toolbelt to increase Canopy, but believe that a

separate bill, that reflects the efforts of a stakeholder working group could identify a broad set of solutions to this challenge and create a bill that better reflects local needs and state-wide goals.

The Amendments to the Bill proposed below support a bill that values retention of existing high value forest, makes alternative afforestation, reforestation, and preservation process clearly defined and easier, and applies an equity and environmental justice lens to the FCA.

Below we make five priority recommendations for Amendments that find balance and work in tandem with each other and have also attached a line by line set of amendments that follow these suggestions and address the interplay between this bill and other laws and standards that apply to land use. Specifically: Prince George's County supports HB723 and SB526 with the following priority amendments:

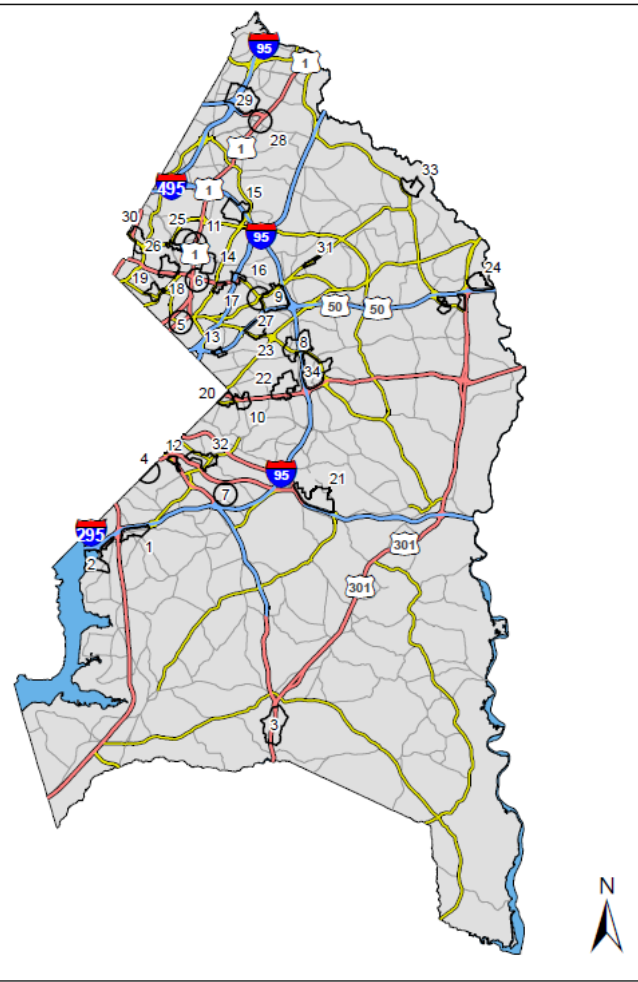
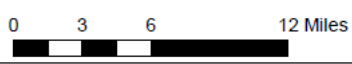
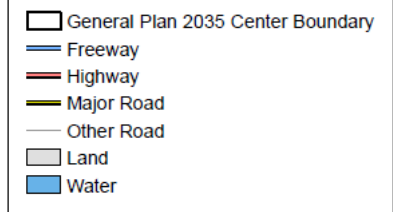
- Prioritize TOD and Town Center Development;
- Phase in the proposed higher requirements outside of priority development areas;
- Maximize utilization of existing priority woodlands, especially for TODs;
- Extend the implementation timeline; and
- Revise or eliminate the variance requirements.

Prioritize TOD and Town Center Development

Problem: The bill undermines environmental justice and investment in underserved communities by increasing the cost of developing in those areas, when instead we should be encouraging investment in those areas.

Recommended Solution: Revitalize the standards in 1607 (b)(2) that were invalidated by the Courts, to prioritize TODs, and ensure that those areas are buildable. This includes both leaving the standard for these areas (as defined in (b)(3)) at ¼ reforestation, and permitting use of both pre-December 2020, and new forest retention banks without restriction of location(re: 5-1601 (I-IV)). There are 34 such areas in Prince George's County, detailed below.

Map #	Center Name	Acreage			
		Center	Floodplain	Net Tract Area	Tree Canopy
1	Oxon Hill	291.0208976	8.114520945	282.9063766	70.90786475
2	National Harbor	524.8464537	248.0904523	276.7560014	19.25432361
3	Brandywine	747.5301314	31.8528186	715.6773128	276.9002726
4	Southern Avenue Metro	251.7093779	24.60000399	227.109374	119.5339705
5	Port Towns	502.6566914	103.2584489	399.3982425	111.0530639
6	Riverdale MARC (Possible Future)	485.3255281	131.213225	354.1123031	87.86166379
7	Branch Avenue Metro	502.6568942	41.86140261	460.7954916	118.1950206
8	Landover Gateway	590.5573366	17.69775898	572.8595777	146.5571672
9	New Carrollton Metro	639.9865656	65.31923189	574.6673337	130.3462897
10	Addison Road Metro	228.9545106	2.474117949	226.4803927	60.1720365
11	UMD East (Future Purple Line)	502.2936462	126.1145301	376.1791161	99.31772649
12	Naylor Road Metro	89.58283552	0.053326076	89.52950944	21.57154524
13	Cheverly Metro	83.14880585	29.89559864	53.25320722	30.65762649
14	College Park/UM Metro/M Square Purple Line	290.1480176	89.11305174	201.0349659	66.42392632
15	Greenbelt Metro	482.3099512	112.9889187	369.3210325	160.7716191
16	Beacon Heights (Future Purple Line)	128.0229823	14.01418153	114.0088007	37.65022963
17	Riverdale Park (Future Purple Line)	86.89522721	6.793496901	80.1017303	14.30940074
18	Prince George's Plaza Metro	361.7699272	6.408599272	355.3613279	82.24186854
19	West Hyattsville Metro	211.3756342	108.5846013	102.7910329	33.77887197
20	Capitol Heights Metro	175.7675103	0	175.7675103	35.32677264
21	Westphalia Center	691.7460415	23.16888632	668.577352	312.2168097
22	Morgan Boulevard Metro	537.2351284	17.34017626	519.8949521	223.8810148
23	Landover Metro	332.4366949	64.97831259	267.4583823	62.9808138
24	Bowie	593.5579949	5.098966888	588.459028	100.9506501
25	UMD Center (Future Purple Line)	463.1383229	12.1332196	451.0051033	46.96424843
26	UMD West	93.79349581	3.119689743	90.67380606	30.17316754
27	Annapolis Road/Glenridge (Future Purple Line)	372.7249109	3.536263944	369.1886469	95.39316243
28	Muirkirk MARC	502.6567519	55.20076502	447.4559869	106.7025756
29	Konterra	797.688811	4.57632278	793.1124883	96.68441556
30	Takoma/Langley Crossroads	400.0329848	0	400.0329848	50.49784454
31	Seabrook MARC (Possible Future)	71.36390367	0	71.36390367	8.115377279
32	Suitland Metro	335.5176934	0	335.5176934	32.21615257
33	Bowie State University MARC	315.4804822	0	315.4804822	148.2894945
34	Largo Town Center Metro	798.7145579	0	798.7145579	213.2017635



**Plan 2035 Centers: Floodplain and Tree Canopy Acreage
Prince George's County, MD**



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Created by: Nicholas Ward Job #4131

Amendment: Remove 5-1606 (h), so that there aren't two sets of calculations for each project. For 5-1607 (b)(3)(ii) clarify that retention banking of both qualified conservation for which an application was submitted or approved before December 31, 2020 and new qualified conservation (retention banks) can be used for these project; and add a (b)(3)(V) that clarifies project in these areas will continue at the ¼ to 1 level.

Phase in Proposed Higher Afforestation, Reforestation and Preservation Requirements

Problems:

- The change from ¼ to 1, to 1 for 1 is too great for the market to digest in one period.

- Additionally, having two sets of calculations (as required by 5.1606(h)) for each project is overly burdensome.
- The bill's 2:1 replacement ratio for priority forest cover is not needed to maintain “no net loss” and is overly restrictive. The law already establishes a hierarchy of priority forest areas for preservation.

Amendment: Remove section (h) of 5.1606, or create a single standard in 5.1606 and add the requirements and alternative afforestation, reforestation and preservation process section from 5.1606.1. On page 5, lines 26-30, and on page 6, lines 1-23 and 30-33, strike all. Phase in at ½ to 1 in 2025; Phase in at 1 for 1 in 2027.

Remove section 5-1601.1(A)(2) on page 7, in lines 11-14, strike “FOR ALL EXISTING PRIORITY FOREST COVER, AS DESCRIBED UNDER § 5-1607(C) OF THIS SUBTITLE, MEASURED TO THE NEAREST 1/10 ACRE CLEARED ON A SITE, THE AREA OF FOREST CLEARED SHALL BE REFORESTED AT A RATIO OF 2 ACRES PLANTED FOR EVERY 1 ACRE CLEARED.”

Utilization of Current Forest Retention Banks

Problem: The bill undermines environmental justice and investment in underserved communities by increasing the cost of developing in those areas. Offsite woodland conservation banks, utilizing existing forest, are one way to enable these developments.

The use of woodland retention in the bill is limited to the extent that it undermines the County’s ability to create a market for environmental attributes, and thus creates a threat to retention of this forest. We have seen that where the environmental attributes of a land cannot be monetized, forests are cleared and the area is used for solar panels, timbering and farming as well as low-density residential development. While these uses may have economic and environmental value, they do not retain woodland.

Recommended solutions: Permit woodland retention in areas that the bill itself identifies as “priority forest” or remove the additional/new requirements placed on what can be “qualified conservation” in 5-1601 (I-IV).

Amendment Language:

Strike 5-1601 amendments (2), page 4 lines 1-11.

-Or -

In 5-1601 replace the ;[AND] at the end of (IV) with ;UNLESS add the following section- as section (V):

(V) THE LAND CONTAINS PRIORITY FOREST COVER, AS DESCRIBED UNDER 5-1607(c)

-Or -

In 5-1601 replace the ;[AND] at the end of (IV) with ;UNLESS add the following section- as section (V):

(V) PROTECTION OF THE LAND WILL:

- Prevent development in 100–year floodplains and on steep slopes,
- Protect the health of: intermittent streams and their buffers, perennial streams and their buffers, or coastal bays and their buffers,
- Provide critical habitats, contiguous forest, or establish or increase existing forested corridors to connect existing forests within or adjacent to the site,
- Protect forest in a local jurisdiction’s green infrastructure plan, forest land and forest corridors suitable for interior-dwelling species, in a targeted ecological area as identified by the Department of Natural Resources, located in a Tier II or Tier III high quality watershed as identified by the Department of the Environment, or located in a water resource protection zone, a reservoir watershed, or a wellhead protection area as identified by a local jurisdiction;
- Protect critical areas for invasives management, or buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights–of–way
- Protect trees, shrubs and plants that are essential for providing wildlife habitat or mitigating flooding, high temperatures or air pollution, or identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the Department
- Retain forest that contain one or more trees that are part of a historic site or associated with a historic structure or designated by the Department or local authority as a national, State, or local Champion Tree, and forests that contain one or more trees having a diameter measured at 4.5 feet above the ground of 30 inches; or 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department,

Extending the Implementation Timeline

Problem: Implementation timeline is impracticable. Jurisdictions will need at least two years to implement the plan and have it approved with both the local legislature and the state’s approving body. DNR will need time to process the alternative processes proposed by local jurisdictions. However, it would be helpful to have access to existing (pre 2021) retention banks as soon as possible.

Solution/Amendment: Change effective Date to July 1, 2025 for major changes (with phase in as recommended above), but preferably keep effective date in 2023 for use of existing retention banks to enable TOD/priority development.

Adjusting or Eliminating the Variance Standards

Problem: Variance requirement (1607(2)) is overly burdensome and may result in excessive litigation and additional pieces should not be added.

Solutions: Remove variance process entirely -or- add additional priority preservation requirements to a section requiring review, but not subject to the variance process as defined in section 5-1611.

Amendment Options:

Remove 1607(c)(2) entirely, eliminating the variance process and include all of the factors from (c)(2) in (c)(1) making this work more like the EIS process, and eliminating the variance process which is overly burdensome and replacing it with a statement of justification.

-Or-

Move the new language in 1607(4)(c)(2)(I-IV) to 1607 4(c)(1) as (IV-VII) requiring review, but eliminating adding additional requirements to the variance process and requiring a statement of justification instead.

For the reasons stated above, the Office of the Prince George's County Executive **SUPPORTS Senate Bill 526 WITH AMENDMENTS** and asks for a **FAVORABLE** report.

ATTACHMENT 1 – Additional Amendment Recommendations

A1: On page 3, in lines 2 and 5, strike the brackets; in lines 5-7, strike “A CONTIGUOUS PATCH OF TREES THAT IS AT LEAST 1 ACRE IN SIZE EXHIBITING AT LEAST ONE TRANSECT OF AT LEAST 240 FEET IN WIDTH.”

Explanation: The bill proposes to establish a different definition of forest land in the General portion of the code while keeping the existing definition in the Forest Conservation Action portion of the code. A forest is a biological community that contains three layers: canopy, understory, and herbaceous. It appears that the bill is trying to establish tree canopy requirements. It is suggested that a separate tree canopy law be proposed separately from the Forest Conservation Act requirements.

A2: On page 3, in lines 10-13, strike “(m) “TREE CANOPY” MEANS THE CROWNS OF DECIDUOUS AND EVERGREEN WOODY VEGETATION THAT IS: (1) THE PRODUCT OF NATURAL GROWTH OR HUMAN PLANTING; AND (2) GREATER THAN 3 METERS IN HEIGHT.”

Explanation: The bill seems to be trying to establish tree canopy requirements based on what aerial imagery will pick up. It is suggested that a new law dedicated solely to tree canopy be proposed.

A3: On page 3, in lines 18-22, strike “(1) INCREASING THE ACREAGE OF LAND IN THE STATE AS MEASURED EVERY 4 YEARS THAT IS: (i) FOREST LAND; OR (ii) COVERED BY TREE CANOPY, FOR LAND LOCATED INSIDE AN URBAN AREA OR OUTSIDE AN URBAN AREA:”

Explanation: This proposal for net increase again seems to be focused on overall tree canopy and not forest. It is suggested that a new law for tree canopy be proposed.

A4: On page 4, in lines 15 through 21, strike “(HH) “QUALIFIED PROJECT” MEANS A PROJECT:

(1) THAT USES QUALIFIED CONSERVATION FOR WHICH AN APPLICATION WAS SUBMITTED OR APPROVED ON OR BEFORE DECEMBER 31, 2020; OR

(2) THAT IS GOVERNED BY A LOCAL PROGRAM THAT HAS ALTERNATIVE AFFORESTATION, REFORESTATION, AND PRESERVATION REQUIREMENTS ADOPTED UNDER § 5–1606.1 OF THIS SUBTITLE.”

Explanation: Any project that uses a bank seems to be considered a “qualified project.” A new term seems unnecessary.

A5: On page 6, lines 24-29 move to page 9 between lines 3 and 4.

Explanation: Moving the time frame in which planting must be accomplished from the existing reforestation section of code (otherwise deleted) and moving it under the proposed language of the bill for planting purposes.

A6: On page 7, lines 1-5, strike “(H) ANY REFORESTATION REQUIREMENTS UNDER THIS SUBTITLE SHALL BE CALCULATED UNDER § 5–1606.1 OF THIS SUBTITLE INSTEAD OF THIS SECTION IF THE ACREAGE OF REQUIRED REFORESTATION IS GREATER AS CALCULATED UNDER § 5–1606.1 OF THIS SUBTITLE THAN IS THE CASE AS CALCULATED UNDER THIS SECTION.”

Explanation: The bill as written would require all projects to have two sets of calculations done. This amendment would remove the need for two calculations and streamline the forest calculations under the higher requirements of the proposed bill.

A7: On page 7, in line 19, strike “.” and insert “, AS DETERMINED BY EACH COUNTY’S ANNUAL REPORT.”; also on page 8, in line 2, strike “.” and insert “, AS DETERMINED BY EACH COUNTY’S ANNUAL REPORT.”

Explanation: It is unclear in the bill as written how maintenance of a baseline level of forest will be determined. The annual reports are required to account for the approved clearing and replacement. There is concern that the bill was intended to use aerial imagery for determination of this metric. Use of aerial imagery would be problematic because there would be significant lag time between plan approval, implementation, and the ability for aerial imagery to capture new planting until it is large enough to register as forest or canopy. The use of aerial imagery to meet this requirement would be setting jurisdictions up for failure. Another option would be to definition for “baseline” to 5-1601 definition list. “baseline level of forest cover”: is the amount of forest cover identified by a local jurisdiction as determined in their alternative afforestation, reforestation and preservation requirements as defined in 5-1601.1. The jurisdiction shall include in that plan the method by which that baseline was determined and shall define in those requirements how a determination shall be made by the jurisdiction every 2 years from the effective date of the requirements as to whether the “baseline level of forest cover” has been maintained.

A8: On page 9, between lines 3-4 insert “(2) (I)THE REFORESTATION REQUIREMENTS UNDER THIS SECTION SHALL BE ACCOMPLISHED WITHIN 1 YEAR OR 2 GROWING SEASONS AFTER COMPLETION OF THE DEVELOPMENT PROJECT. (II) IF REFORESTATION CANNOT BE REASONABLY ACCOMPLISHED ON–SITE OR OFF–SITE, THE REQUIREMENT TO CONTRIBUTE MONEY TO A FOREST CONSERVATION FUND UNDER § 5–1610 OF THIS SUBTITLE SHALL BE MET WITHIN 90 DAYS AFTER COMPLETION OF THE DEVELOPMENT PROJECT.”

Explanation: Keeping timing mechanism from previous reforestation section of code to compliment the language from the bill.

A9: On page 9, in line 4, strike “FOR A QUALIFIED PROJECT,”

Explanation: The use of preservation banks should not be limited to certain “qualified projects.” All projects should be able to use new or old banks. Removal of this proposed language returns the code to the current language requiring all preservation banks to sell 2 acres of credit for every 1 acre of credit not met on a development site (2 acres of bank forest for every 1 acre of development clearing).

A10: On page 9, in line 21, strike “SOIL AMENDMENT AND STABILIZATION”

Explanation: This language would require grading, which requires clearing of the forest and would not restore a forest, but rather replace it, which should be done at a ratio consistent with this bill or a counties approved alternative program for no net loss.

A11: On page 9, in line 22, strike “THE ESTABLISHMENT OF UNDERSTORY”

Explanation: Forest is a biological community that contains three layers: canopy, understory, and herbaceous. A forest should already contain an understory, otherwise it is just canopy. Credits for converting canopy into a forest should be considered elsewhere in the code with guardrails not currently provided in the bill.

A12: On page 9, in lines 26-29, strike “(IV) THE ESTABLISHMENT OF PLANTED GREEN INFRASTRUCTURE OR ENVIRONMENTAL SITE DESIGN PRACTICES BEYOND THE AMOUNT REQUIRED UNDER § 4–203 OF THE ENVIRONMENT ARTICLE MAY GRANT FULL CREDIT AS A MITIGATION TECHNIQUE; AND”

Explanation: While this approach would provide some flexibility in meeting the forest conservation requirements, especially in urban areas where it is more difficult to meet the requirements, the credits would not provide forest cover. Plantings for stormwater management features often have restrictions on the planting allowed, such as no plants on embankments (the dam portion of the structure that holds back the water). While planting in stormwater management areas will provide vegetation with some tree canopy, it is not forest and should not be counted as such in order to meet “no net loss” of forest. Additionally, stormwater features almost always require an easement for the stormwater function which would not allow a forest conservation easement to be placed on it, thereby not ensuring perpetual credits. Forest credits should be granted for forest and tree canopy should be a separate requirement.

A13: On page 10, in lines 4-6, strike “[and] STREAMS AND THEIR BUFFERS OF AT LEAST 50 FEET FROM THE STREAM CHANNEL, perennial streams and their buffers OF AT 5 LEAST 100 FEET FROM THE STREAM CHANNEL, coastal bays and their buffers,” and insert “AND PERENNIAL STREAMS AND THEIR BUFFERS OF AT LEAST 50 FEET FROM THE STREAM CHANNEL.”

Explanation: County's may have different stream buffer widths, but should be at a minimum of 50 feet. Coastal bays are a remnant in the code from before there was a Critical Area Commission. These areas are included in the Chesapeake Bay Critical Area and Coastal Bays regulations and should not be duplicated in the Forest Conservation Act.

A14: On page 10, in lines 10-12, strike “(III) TREES, SHRUBS, AND PLANTS IN URBAN AREAS THAT ARE ESSENTIAL FOR PROVIDING WILDLIFE HABITAT OR MITIGATING FLOODING, HIGH TEMPERATURES, OR AIR POLLUTION.”

Explanation: While these plants are very important for providing habitat and mitigating urban heat island effect, the proposal in the bill is not forest and would be better incorporated into a tree canopy regulation of some sort. Tree canopy and forests provide very different ecological functions and should not be mixed within regulations. The FCA should regulate forest.

A15: On page 10, in line 14, after “priority” insert “FOREST COVER”.

Explanation: To be consistent with page 7, line 11 term “priority forest cover” that was introduced so that it is consistent within the code.

A16: On page 10, in lines 14-16, strike “, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that the applicant qualifies for a variance under § 5–1611 of this subtitle.

Explanation: This revision will identify priority forest cover elements (as proposed in the bill) but will move the variance requirement down in the code to only the elements currently required in the code.

A17: On page 11, in line 7, strike “and coastal bays”

Explanation: Coastal bays are included in the Chesapeake Bay Critical Area and Coastal Bays regulations and should not be duplicated in the Forest Conservation Act.

A18: On page 11, in lines 21 and 22, strike “, when appropriate” and insert “WITH A MINIMUM OF EIGHT (8) DIFFERENT SPECIES THAT MIMIC THE FOREST ASSOCIATION OF NEARBY EXISTING FORESTS.”

Explanation: All planting for forest conservation credits must be native, include a minimum number of different species to ensure forest stability, and the species planted should mimic the species of trees found in on-site or nearby ecosystems.

A19: On page 11, in line 21, after “Use” insert “GENETICALLY DIVERSE”.

Explanation: Emphasis should be placed on using genetically diverse plant materials instead of cloned cultivars to allow the planted areas to grow into stable and resilient ecologically functioning forests.

A20: Change 5-1606.1 (B)(1) from DNR ‘may’ approve to DNR ‘shall’ approve; Change section (B)(2)(I) to read ‘shall make substantive recommendations to the jurisdiction as to how the local jurisdiction’s alternative afforestation, reforestation and preservation process can be improved; remove section (B)(2)(II).

Explanation: Requiring DNR approval of local jurisdiction’s alternative afforestation, reforestation and preservation process is unnecessary, overly burdensome, and undermines the ability of local jurisdictions to plan future development, provide market certainty and empower residents to determine how to achieve environmental, social, and quality of life objectives.

Remove requirement of DNR approval, and allow jurisdictions to develop a plan that will ensure forest retention. Utilize a single auditing process, with requirement that jurisdictions define their baseline and state how the future measurement shall be conducted, and define retention goals to determine if plan is having intended results. If plan is failing to meet objectives, have DNR support jurisdictions in making necessary changes to plan to meet objective.

A21: Define any remaining new terms (if amendments above are made, these may be unnecessary)

There is a need to review and define key terms for clarity. Terms that are helpful for definition are “qualified project” as this creates confusion with “qualified conservation”

BaltimoreCounty_FWA_SB 526.pdf

Uploaded by: D'Andrea Walker

Position: FWA



JOHN A. OLSZEWSKI, JR.
County Executive

JENNIFER AIOSA
Director of Government Affairs

AMANDA KONTZ CARR
Legislative Officer

JOSHUA M. GREENBERG
Associate Director of Government Affairs

BILL NO.: **SB 526**

TITLE: Natural Resources – Forest Preservation and Retention

SPONSOR: Senator Elfreth

COMMITTEE: Education, Energy, and the Environment

POSITION: **SUPPORT WITH AMENDMENTS**

DATE: March 2, 2023

Baltimore County **SUPPORTS WITH AMENDMENTS** Senate Bill 526 – Natural Resources – Forest Preservation and Retention. SB 526 updates the state’s Forest Conservation Act (FCA) with a goal to slow, and possibly reverse, the continued loss of forest land across the state.

The bill would provide each county the opportunity to develop their own forest conservation program and present that plan to DNR for approval that the plan is sufficient to achieve no-net-loss of forest over a four year period. If a county opts not to create their own plan, or if DNR rejects the plan, then a 1:1 replanting ratio for forest loss would apply to that jurisdiction with a 2:1 replanting ratio within “priority areas” within that jurisdiction. The bill contains many positive provisions toward helping to increase forest cover, protect priority forests, and better account for tree canopy added within urban areas, however there are several areas that Baltimore County believes should be amended to ensure local jurisdictions can implement the legislation, by adding clarification and specificity. The following are issues within the bill we believe should be addressed:

1. This bill changes the definition of “forest land” as it pertains to state goals for forests, separate from the Forest Conservation Act (FCA) itself, but this new definition conflicts with the FCA definition of “Forest” (and “Forest Cover”) stated in 5-1601. As a result, the state goal for “forest land” would not be measured in the same way as the FCA would measure “forest cover” and so the measures of success in meeting the state goal and the FCA goal become disconnected. An amendment to ensure that both are measured similarly would help ensure that forest conservation (under FCA) and forested area are measured the same way.

2. The “Forest Land” definition appears to be an incomplete approximation of the way the Chesapeake Bay Program (CBP) maps forest land use. This change might require the State to modify land use map data for Chesapeake Bay modeling. CBP land use has a number of carve outs from “forest” land such as agricultural windbreaks, natural succession, and canopy over other surfaces. A result of these carve outs is that CBP “forest” land” cover includes patches much smaller than 1 acre in size and more narrow than 240 feet in width. We should ensure comparability among existing State and regional programs and methodologies to ensure data and tracking compatibility.
3. Definitions of “forest” and “reforestation” may impact NPDES MS4 permit (e.g. impervious surface restoration) and TMDL compliance of counties. The existing definitions in Title 5 allow “forest” to be as small as 10,000 sq ft. Excluding tree covered areas between 43,560 (1 acre) and 10,000 sq ft from the definition of forest makes MS4 permit and TMDL compliance more challenging in some jurisdictions. We are concerned this provision could result in reclassification of tree plantings from “reforestation” to “tree canopy expansion” which has lower modeled efficacy for pollutant load reductions, thus increasing costs for pollutant load reductions. At a time when we need all the trees we can get, especially in more developed communities, raising costs associated with doing so is problematic.
4. The bill is not clear regarding whether or how a county must account for losses that qualify for Declarations of Intent, such as clearing for agriculture, single lot intra-family transfers, and forestry activities. Currently, such changes in land use are not required to be mitigated under the FCA. The bill should clarify how these, and potentially other forest losses, are “counted” toward the four-year “no net loss” goal.
5. Amendments to clarify the method for crediting street trees and remediation of degraded forest land toward FCA satisfaction should be added to the bill, to ensure a local jurisdictions understands how to add such measures to its local implementation plan.

Baltimore County lauds the intent of SB 526 to increase flexibility for local jurisdictions responsible for FCA implementation while raising expectations for forest replacement associated with losses due to regulated activities. Further clarification and additional specificity, however, are necessary to ensure local jurisdictions can implement the new requirements.

Accordingly, Baltimore County requests a **FAVORABLE WITH AMENDMENTS** report on SB 526. For more information, please contact Jenn Aiosa, Director of Government Affairs at jaiosa@baltimorecountymd.gov.

SB0526_DNR-SWA_EEE_3-2-23.pdf

Uploaded by: David Goshorn

Position: FWA



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Acting Secretary
Allan Fisher, Deputy Secretary

March 2, 2023

BILL NUMBER: Senate Bill 526 – First Reader

SHORT TITLE: Natural Resources - Forest Preservation and Retention

DEPARTMENT’S POSITION: SUPPORT WITH AMENDMENTS

EXPLANATION OF DEPARTMENT’S POSITION:

The Department of Natural Resources supports SB 526 with amendments, and the Department welcomes the opportunity to continue working with the sponsors and others on specifics.

SB 526 proposes to address a recent study’s analysis of existing tree canopy and forest cover by replacing the no net loss policy with a net increase policy. The Department supports this intent, however the policy statement assumes an indefinite availability of land to plant over an indefinite period of time, should consider natural disasters or electrical reliability clearing, and assumes timely availability of the data sources. It would be worth considering a more quantitative goal and one which addresses changes beyond the control of jurisdictions. Additionally, the definition of forest land should not specify the patch width since widths other than 240 feet are in use and planned by the Chesapeake Bay Program and the United States Forest Service’s forest inventory and analysis (FIA). Finally, to help clarify or further define priority areas for conservation, the Department would recommend referencing existing processes like the state-led priority urban tree mapping initiative.

SB 526 addresses the use of existing forest or qualified conservation for mitigation bank purposes. Retention mitigation banking is one of few developed-area conservation strategies for mature forests. Holding on to older forests recognizes the tremendous benefits of carbon storage and sequestration, as well as the potential for carbon markets. The bill narrowly defines the land available for this use by removing specific land types that could be considered priority areas for retention and protection as stated in the Maryland Forest Conservation Act (FCA). The study states that existing forest banks comprise 81% of reported bank acreage with a total of 13,997 acres. These add up to large acres of existing forest (‘usually larger trees’) that are protected from development by easements and provide landowners with a source of income. With this bill language, qualified conservation banks will be permitted as a mitigation option that has the ability to conserve forests of interest at no cost to the state.

Other provisions authorize the use of forest restoration as required mitigation at two acres restored to one acre of requirement and expand the minimum mitigation requirements. The addition of another mitigation option on top of new tree planting and retention mitigation banking will expand flexibility in meeting mitigation requirements.

SB 526 also reduces the minimum acreage eligibility for the Forest Conservation Management Agreement (FCMA) program from five acres to two acres, which may increase the number of participants.

Contact: Emily Wilson, Director, Legislative and Constituent Services (Acting)
emilyh.wilson@maryland.gov ♦ 410-260-8426 (office) ♦ 443-223-1176 (cell)

BACKGROUND INFORMATION:

The Harry R. Hughes Center for Agro-Ecology recently released a technical study on Changes in Forest Cover and Tree Canopy in Maryland, November 2022. This study was originally required per 2019 Session Chapter 405, and then extended per 2021 Session Chapter 645. The study looked at existing tree canopy and forest cover and changes in cover, as well as Maryland FCA’s mitigation banking option.

Another aspect of the study reports on existing forest mitigation banking practices - both planted and existing forest banks - at the local jurisdiction level across the state, and states that existing forest banks comprise 81% of reported bank acreage with a total of 13,997 acres. These add up to large acres of existing forest (‘usually mature trees’) that are protected from development by easements and provide landowners with a source of income. This is a means of protecting existing forest without cost to the state.

The bill proposes to address a technical issue with the existing qualified conservation bank language as approved during the 2021 Session and following a 2020 Office of the Attorney General opinion determined that new tree planting was the only clearly authorized mitigation for FCA requirements. That language enabled the use of existing forest as a mitigation banking site to meet mitigation requirements under the Maryland FCA but only using banks approved prior to December 30, 2020. This bill clarifies the existing language to enable those retention banks or qualified conservation banks that were submitted or approved before December 31, 2020, to still be utilized, and allows retention mitigation banking to be used going forward where local jurisdictions have authorized. This bill also adds restrictions to where banks can be located.

Lastly SB 526 reduces the acreage eligibility for the FCMA program from five acres to two acres in specific counties. This change will result in a 110% eligibility increase in parcel eligibility by making an additional 17,314 parcels eligible. The FCMA program reduces property tax to the agricultural rate for those who enter the program with five acres. For properties under five acres, which would become eligible for the program via this bill, the assessment value would be frozen at the property’s current rate when it enters the program.

During the 2021 Session, Chapter 645 established qualified conservation banking as an allowable form of FCA mitigation. However, the bill did not address those existing forest retention banks that were established prior to December 31, 2020.

The Maryland FCA (NRA 5-1601–5-1613) applies to any subdivision plan or application for grading or sediment control permit by any person, including local, state and federal government, on areas of 40,000 square feet or greater. The Act requires that mitigation be accomplished for the land disturbance onsite, offsite, by creation of forest land banks, or by fee-in-lieu. The statute provides preferred sequences for afforestation and reforestation, priority areas for retention and protection, and priority areas for afforestation or reforestation. Prior to the Office of the Attorney General opinion, retention of existing forest banks which required preservation at a 2:1 ratio (2 acres of existing forest protected for each 1 acre of required mitigation) was occurring in those approximately 14 counties that adopted the language in their forest conservation ordinances.

BILL EXPLANATION:

SB 526 revises the previous no net loss of forest policy language to a net increase every four years.

SB 526 revises the definition of qualified conservation which affects qualified conservation mitigation banking through the Maryland FCA. The bill revises the method for calculating reforestation mitigation and enables the local jurisdiction, if they wish, to propose alternative mitigation requirements to maintain its existing level of forest cover over a two-year period. The department may approve this alternative and if approved, the department can rescind the approval if expected results are not achieved at the end of the two consecutive two-year periods. The bill also adds to the mitigation methods allowed in specifically

designated municipal corporations and adds to the list of priority areas for retention and protection as well as the narrower list of these areas that require a variance if designated for disturbance on the forest conservation plan. Lastly, the bill reduces the eligibility threshold to enter into the FCMA program in specific counties.

SB0526-EEE_MACo_SWA.pdf

Uploaded by: Dominic Butchko

Position: FWA



Senate Bill 526

Natural Resources – Forest Preservation and Retention

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Education, Energy, and the Environment
Committee

Date: March 2, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS** SB 526 **WITH AMENDMENTS**. The bill updates Maryland’s approach to forest conservation, requiring among other things: no net loss of trees, reauthorizing forest mitigation banking, moving forest conservation goals from the project level to the county level, and expanding tools counties can use to meet expanded forest conservation goals.

In 1991, Maryland passed the Forest Conservation Act (FCA). The Act was an attempt to limit the degradation of Maryland’s forest due to development. According to the Department of Natural Resources (DNR) the purpose of the FCA was to,

“...minimize the loss of Maryland's forest resources during land development by making the identification and protection of forests and other sensitive areas an integral part of the site planning process.”

The 2022 study by the Harry R. Hughes Center for Agro-Ecology outlines that since the FCA was enacted in 1991, Maryland’s overall forest cover has receded at a slower rate and is approaching stabilization. This stabilization varies by region, with more developed areas seeing higher rates of loss and fragmentation. Maryland’s statewide tree landscape has improved since the FCA was enacted, but opportunities for improvement remain.

Forest conservation touches more than just trees. Policies protecting these natural areas also have an impact on development and public health. Counties recognize that one of the value propositions of living in Maryland is its natural landscapes, including its forests. But this must also be valued with economic growth and further development. Counties are not suggesting that these three goals – conservation, growth, and public health – are mutually exclusive. But counties do urge the General Assembly to consider the broader impact of such wide-reaching and comprehensive legislation.

Counties thank both the Senate and House sponsor, as well as the advocates, for their extensive conversations with both individual county leaders and MACo staff regarding ways to strengthen this legislation. MACo has been working with the sponsors and advocates on several technical and clarifying amendments, some of which are highlighted below.

Counties' overall goal is to ensure that the final product is both implementable and has the flexibility to fit the unique contours of Maryland's system of local governance.

1. Exempt tree farms and orchards from the requirements of this legislation.
2. Improve or remove the broad process and requirement for zoning variances.
3. Require DNR to regularly update the forest conservation manual.
4. Instruct that conservation plans should be automatically approved after two years if DNR has not acted on them.
5. Place greater focus and investment on not only the quantity of forests, but also the quality of forests. This bill primarily places focus on the former.
6. Place greater focus on the elimination of invasive species that are harmful to forests and negatively contribute to tree loss and forest health.
7. Fully restore forest mitigation banking. Forest mitigation banking was effectively removed as a tool for counties through legislation several years ago. Counties urge for practical and effective forest mitigation banking to be fully restored with no sunset on the availability of banks.
8. Provide more data regarding the taxation segment of this legislation. This policy places great accountability on counties to meet forest conservation goals while at the same time removes resources to meet those goals.
9. Narrow the scope of replanting requirements. As written, the bill references protections and replanting requirements for trees, shrubs, and plants. Requiring replanting of all vegetation is a major policy shift and an overwhelming charge for almost all jurisdictions.
10. Address definitional concerns, including the definition of "Forest Land" which does not exclude non-native, invasive species. Under the current definition, counties fear a landowner could be penalized for clearing an area that is mainly invasive species.

Counties remain committed to working with the Committee, stakeholders, and staff to address the amendments listed above and to alleviate other concerns shared with the sponsors. Counties firmly believe that the goals of conservation, growth, and public health are not mutually exclusive and policy solutions that address all three goals are very much within reach. Accordingly, MACo urges a **FAVORABLE WITH AMENDMENTS** report for SB 526.

MFA Statement on SB 526, Forest Retention and Pres

Uploaded by: Joe Hinson

Position: FWA



Maryland Forests Association, Inc.

P.O. Box 332

Linkwood, MD 21835

410-463-1755

Maryland's voice for forest, wildlife, and natural resource management

Statement of the

Maryland Forests Association

Regarding

SB 526, Forest Preservation and Retention

March 2, 2023

To the Chair and Members of the Committee:

The Maryland Forests Association, representing the forest industry, landowners, and forest enthusiasts from across the state, supports the goals of the Forest Conservation Act. This act requires those clear forest lands with the intent to convert them to another, non-forest use, to either plant an equivalent area of trees on non-forested land, pay into a mitigation fund or protect the perpetual use of other forest lands from conversion.

Occasionally, usually at the county zoning level, we see confusion between commercial logging and forest management where there is no intent to convert the land where this occurs to a non-forest use. In fact, logging is a function of determining what the future forest will be like and protecting or enhancing forest values on that land. While it may temporarily alter the appearance of the forest, logging per se will not convert the land to another use.

When there is confusion between logging and land conversion, regulatory requirements that may be appropriate for the soil disturbances associated with land clearing may be imposed on a commercial logging project. Logging as a part of forest management is already well-regulated by the Maryland Forest Service, Maryland Department of Environment and the local soil conservation district. Additional regulations that might be imposed by a county are redundant and often excessive.

Maryland Forests Association suggests a simple amendment to help clarify the distinction between logging and land clearing for conversion by specifying that the provisions of this chapter do not apply to commercial logging or forest management activities where there is no intent to convert the land to a non-forested use.

With the addition of such language, the Maryland Forests Association supports the legislation. Please feel free to contact Beth Hill, Executive Director, at 410-463-1755 or Joe Hinson, President, at (208) 890-2931 if we can provide any additional information.

HoCo OCS SB 526.pdf

Uploaded by: Joshua Feldmark

Position: FWA



HOWARD COUNTY OFFICE OF COMMUNITY SUSTAINABILITY
3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-0700

Joshua Feldmark, Director
Dr. Calvin Ball, County Executive

www.howardcountymd.gov

March 2, 2023

Senator Brian Feldman, Chair
Senate Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, Maryland 21401

Re: **TESTIMONY OF SUPPORT**: SB 526: Natural Resources - Forest Preservation and Retention

Dear Chair Feldman, Vice Chair Kagan, and Members of the Committee,

Howard County writes to request the Committee's support with amendments on Senate Bill 526. As you may be aware, in December of 2019, Howard County passed the strongest local Forest Conservation Act in the state.

Our Forest Conservation Act revision aimed at addressing two major problems. The first was the overall loss of forest in Howard County and a significant move toward a goal of no net loss. The second, and equally important goal, was to address what we refer to as "forest migration." Prior to these changes, forests in the eastern part of the County were being cut down only to be replanted in the western part of the County. This practice resulted in a lack of tree equity for many communities in the East

Howard County used two primary strategies to address the two issues outlined above. First, we increased the replanting ratio from the state minimum of '¼ to 1' to '1 to 1.' Then, we added an incentive for replanting done in the same watershed as the cutting - whereby the replanting ratio is now '½ to 1.' The other component was for residential developments, where 75% of the overall forest obligation must now occur on the site of the development through a combination of retention and/or replanting. This change helps ensure that the remediation of trees cut happens in the same neighborhood as the development.

Howard County applauds the initiative to improve the state Forest Conservation Act through both protection against forest loss and attention to important equity issues.

While the County supports the objectives of SB526, a few provisions of the bill give us pause. First, an overall replanting ratio of '1 to 1' is admirable, but with no exceptions, Howard County would be forced to eliminate its incentive for replanting within the same watershed as the development. This would be an unfortunate and unintended consequence that could undermine the health of our waterways by allowing replanting to again migrate away from the areas where the cutting occurs. An amendment could exempt local standards that provide for a lesser replanting ratio within the same watershed as the trees cut.

Secondly, the establishment of a '2 to 1' replanting ratio for cutting of "priority protection" areas is an understandable deterrent. However, the language of the law refers to "trees, shrubs, and plants." Read broadly, this language could require the replanting of not only trees cut in priority protection areas, but also invasive species, vines and other less desirable plant life at a '2 to 1' ratio. An amendment could make clear that the intent is only to replace trees cut in "priority protection" areas.

Additionally, due to the manner in which forest conservation obligations are calculated, the proposed '2 to 1' ratio could render many sites unable to achieve the 75% on-site reforestation requirement prescribed by Howard County's law. An amendment could provide for greater flexibility from the '2 to 1' ratio for jurisdictions like Howard County with on-site retention/replanting requirements that exceed state minimum standards.

Again, Howard County lauds the goals of this legislation and respectfully requests a few amendments that would ensure its local law remains a model of strength in forest conservation.

I welcome your support and urge a favorable report with amendments on Senate Bill 526.

All the Best,

Joshua D. Feldmark

Joshua Feldmark
Director, Howard County Office of Community Sustainability

SB 526 - Forest Retention - FWA - REALTORS.pdf

Uploaded by: Lisa May

Position: FWA



Senate Bill 526 – Natural Resources – Forest Preservation and Retention

Position: Support with Amendments

Maryland REALTORS® supports efforts to conserve forest land in the state and to provide additional options for developers to meet their forest retention requirements. However, given the severe housing shortage in Maryland, those efforts must also be balanced against the need for additional housing and housing affordability.

In order to protect both of those goals, Maryland must maintain a robust off-site forest banking program. This is particularly true for areas designated for higher-density development, like those near transit areas and in priority funding districts. If off-site forest banking is not readily available or is severely restricted, housing developers will be subject to higher in lieu fee payments, which will raise the costs for any homes that result. We also have concerns that the increased mitigation ratios for forest clearing will have a similar impact on housing affordability.

Finally, REALTORS® recommend that projects within the existing development pipeline be grandfathered into any new forest retention requirements. Requiring these changes on developers which have already incurred substantial time and expense in meeting the current requirements should not be faced with changing standards in the middle of their projects.

With the above amendments, Maryland REALTORS® requests support for SB 526.

For more information contact
lisa.may@mdrealtor.org or christa.mcgee@mdrealtor.org

SB526 - RMC Support Testimony - Natural Resources

Uploaded by: Megan D'Arcy

Position: FWA

Susan O'Neill, Chair

Charlotte Davis, Executive Director

Testimony in Support with Amendment of
Senate Bill 526 – Natural Resources – Forest Preservation and Retention
Education, Energy, and Environment Committee
March 2, 2023

The Rural Maryland Council supports with amendment Senate Bill 526 – Natural Resources – Forest Preservation and Retention. This bill will strengthen protection for forests, decreasing forest fragmentation while maintaining and increasing the total acreage of forest state wide by, altering the definition of "qualified conservation" for purposes of provisions of law related to forest mitigation banks; establishing and authorizing certain alternative methods of calculating forest afforestation, reforestation, and preservation requirements; adding certain tree plantings and practices as methods that certain municipal corporations may use to meet afforestation or reforestation requirements; and generally relating to forest preservation and retention.

A recent study published by the Harry R. Hughes Center for Agro-Ecology of the University of Maryland found that Maryland experienced a net statewide forest loss of more than 19,000 acres from 2013 through 2018. Losses to development and forest fragmentation - particularly in Montgomery, Prince George's, Anne Arundel, Charles, Calvert and Baltimore County - remain significant.

Senate Bill 526 will strengthen current law to address this forest loss and fragmentation by:

- Updating forest goals and definitions to provide clarity and reflect new data.
- Change state policy regarding the “retention and sustainable management of forest lands” from encouraging achieving no-net-forest-loss, to increasing forest land acreage and tree canopy across MD.
- Provide afforestation* requirements for developed areas, while establishing priority afforestation and reforestation areas. *Afforestation – the act of establishing a forest, especially on land not previously forested.
- Establish forest conservation thresholds for agricultural and resource areas, medium, high-density, mixed-use and planned unit development areas, commercial and industrial use areas, and institutional development areas. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of 1/4 acre planted for every 1 acre removed, to a ratio of 2 acres planted for every 1 acre removed. Likewise, it establishes a formula for payment into the Forest Conservation Fund.
- Establishes parameters for afforestation and reforestation efforts, both on-site and off-site. Likewise, standards for meeting afforestation and reforestation requirements are established to guide State and local programs.

The Council works closely with the Maryland Forest Association (MFA) – an association that represents forest landowners and forest product companies. MFA staff have informed the

“A Collective Voice for Rural Maryland”

Council that some counties occasionally confuse commercial logging where the land is not to be converted to a non-forest use with forest land clearing where the intent is to convert the use, usually to development. To avoid this confusion, MFA suggests a simple amendment noting that the provisions of the act do not apply to commercial logging or forest management activities (amendment text attached).

The Rural Maryland Council supports forest preservation and retention and respectfully requests your favorable support of House Bill 289.

The Rural Maryland Council (RMC) is an independent state agency governed by a nonpartisan, 40-member board that consists of inclusive representation from the federal, state, regional, county and municipal governments, as well as the for-profit and nonprofit sectors. We bring together federal, state, county and municipal government officials as well as representatives of the for-profit and nonprofit sectors to identify challenges unique to rural communities and to craft public policy, programmatic or regulatory solutions.

SB 0526 FAV DPP Testimony MW LS23.pdf

Uploaded by: Michael Wilkins

Position: FWA



FREDERICK COUNTY GOVERNMENT

Jessica Fitzwater
County Executive

DIVISION OF PLANNING & PERMITTING

Department of Development Review & Planning

Steven C. Horn, Division Director

Michael L. Wilkins, Director

SB 0526 - Natural Resources – Forest Preservation and Retention

DATE: March 2, 2023
COMMITTEE: Senate Education, Energy, and the Environment
POSITION: Favorable
FROM: Michael Wilkins, Frederick County Department of Development Review and Planning Director

As the Director of the Frederick County Department of Development Review and Planning, within the Division of Planning and Permitting, I respectfully request a favorable report on SB 0526 - Natural Resources – Forest Preservation and Retention with the inclusion of our attached amendments.

In my role, I manage Frederick County's compliance with the Forest Conservation Act and work closely with stakeholders impacted by state and local forest conservation policies. I am proud of the strong conservation policies Frederick County has enacted and commend the state's effort to study and improve statewide conservation practices.

To help ensure that statewide forest conservation policies are feasible for county and local governments, I believe there are a few minor amendments (see attached) that should be made to SB 526. First, we believe changes should be made to the exemptions to "qualified conservation," listed on pages 3 and 4. With the current bill language, we would be prohibiting the protection of priority retention areas based on a property's development potential. Instead, we recommend the state identify specific target areas that are included in the forest banking program as a way to prioritize conservation in high-need habitats while not unduly limiting what projects qualify. These target areas should include forests that are buffers for streams, creeks, and floodplains, as well as critical or vulnerable habitats. This is a policy Frederick County has adopted and has been a successful tool in maximizing the impact of our conservation efforts. Prior to the adoption of the "Trees Solution Now Act of 2021", Frederick County permanently preserved 2,500 acres of existing forest in priority conservation areas, including stream buffers, floodplains, and habitat for rare, threatened, and endangered species. Regardless of a property's development potential, the best way to protect priority conservation areas is through a permanent easement program.

Second, the deadlines for use of monies in the Forest Conservation Fund should be adjusted to provide localities sufficient time to effectively use these funds for planting projects. Frederick County Government supports legislation (HB 530) to extend the timeframe that local jurisdictions have to use forest conservation funds for reforestation or afforestation from two years (or three growing periods) to five years (or six growing periods). We ask that those changes be made in SB 526 as well.

Third, the proposed revisions to the definition of "Forest land" is in conflict with the definition of "forest" in 5-1601 of the Forest Conservation Act. The definition of "forest" in 1-1601 includes a minimum area of 10,000 square feet, and Frederick County's definition includes a

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minimum width of 35 feet. If the definition of “forest lands” is interpreted to be more restrictive than the definition of forest under 5-1601, it could require a forest to be a minimum of 1 acre (43,560 square feet) in size with a minimum width of 240 feet to be considered forest for FCA. This means that an area of trees and other woody plants that is less than 1 acre in size is not considered to be forest and can be cleared without penalty or mitigation. This will result in a net loss of forest and is contrary to the goals of this legislative effort. If the proposed definition is to be used only for the purpose of measuring forest canopy, then it will exclude areas that are considered forest for the purpose of meeting FCA requirements. We recommend the state adopt a definition that will better meet the purpose of the Forest Conservation Act.

Furthermore, to better fulfill the intent of the Forest Conservation Act, I believe that the definition of “Forest lands” should include the qualifier “native”, or “predominantly native.” This is an important distinction to ensure that our policies are not requiring the protection of non-native, invasive species that threaten the well-being of our ecosystems. Requiring conservation easements, or, penalizing a property owner for clearing an area comprised of 100% invasive tree species would be an unfortunate consequence of the language as currently drafted.

Finally, to balance the needs of our conservation efforts with adjacent economic industries, we recommend exempting Christmas tree farms and orchards from the “tree canopy” definition. Regular or occasional clearing or tree removal is a crucial component of these businesses, and the intent of the Forest Conservation Act is not to stifle those industries.

Once again, thank you for your consideration of SB 526. With these amendments, I believe the Forest Conservation Act will meet the needs of Frederick County Government and the communities across the state. I urge the committee to give SB 526 a favorable with amendments report.

Respectfully,

Michael Wilkins
Director, Development Review and Planning
Frederick County, MD Division of Planning and Permitting
30 North Market Street,
Frederick, MD 21701
301-600-2329
mwilkins@FrederickCountyMD.gov

Requested Amendments

AMENDMENT 1:

Page 3 – 4 section 5-1601. (gg)

(2) Replace IS NOT LOCATED ON LAND FOR WHICH and subsections (I) through (IV) with:

(2) WILL PROVIDE BUFFERS FOR STREAMS, CREEKS, FLOODPLAINS, WETLANDS OR OTHER HYDROLOGICALLY SENSITIVE AREAS, HABITATS FOR RARE, THREATENED, OR ENDANGERED SPECIES, HABITATS FOR INTERIOR DWELLING BIRD SPECIES, AND OTHER AREAS DETERMINED BY THE DEPARTMENT THAT FURTHER THE JURISDICTIONS FOREST CONSERVATION AND ECOLOGICAL ENHANCEMENT GOALS.

AMENDMENT 2:

5-1610.

(b) There is a Forest Conservation Fund in the Department.

(e) (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within [2] **5** years or [3] **6** growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of [2] **5** years or [3] **6** growing seasons, and at the end of that time period, any portion that has not been used **OR ENCUMBERED** to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

AMENDMENT 3:

Page 3

(e) (1) “Forest land” means [a biological community dominated by trees and other woody plants that are capable of producing timber or other wood products with a stocking of at least 100 trees per acre with at least 50% of those trees having a 2–inch or greater diameter at 4.5 feet above the ground] **A CONTIGUOUS PATCH OF NATIVE (or predominantly native) TREES THAT IS AT LEAST 10,000 SQUARE FEET IN SIZE EXHIBITING AT LEAST ONE TRANSECT OF AT LEAST 35 FEET IN WIDTH**

AMENDMENT 4:

Page 3

(M) “TREE CANOPY” MEANS THE CROWNS OF DECIDUOUS AND EVERGREEN WOODY VEGETATION THAT IS:

(1) THE PRODUCT OF NATURAL GROWTH OR HUMAN PLANTING; AND

(2) GREATER THAN 3 FEET IN HEIGHT.

(3) IS NOT A COMMERCIAL CHRISTMAS TREE FARM

(4) IS NOT A COMMERCIAL ORCHARD

SB 526 - MoCo_Shofar_SWA (GA 23).pdf

Uploaded by: Steven Shofar

Position: FWA



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

SB 526

DATE: March 2, 2023

SPONSOR: Senator Elfreth, et al.

ASSIGNED TO: Education, Energy, and the Environment

CONTACT PERSON: Steven Shofar (steven.shofar@montgomerycountymd.gov)

POSITION: Support with Amendments

Natural Resources – Forest Preservation and Retention

The intent of this bill is to increase forest and canopy cover across Maryland beyond a no-net-loss threshold. This is a very timely and appropriate goal that aligns with many of Montgomery County's long-term goals for environmental protection, climate change, carbon emissions, and livable communities. The bill recognizes that retention of forests and canopy is needed in addition to reforestation and other plantings. It aims to increase forest retention and planting requirements to maintain, at a minimum, no net loss and move towards increasing forests and canopy across the State over time.

Given the complexity of the Forest Conservation Act (FCA), the Montgomery County Department of Environmental Protection (DEP) recommends a number of clarifying and technical changes to facilitate smooth implementation and avoid unintended circumstances. I have attached specific comments developed by DEP that identify issues that could be addressed in technical and clarifying amendments.

Montgomery County respectfully requests that the Education, Energy, and Environment Committee give Senate Bill 526 a favorable report with amendments that address the issues below.

Comments regarding Senate Bill 526

**Developed by the Montgomery County Department of Environmental Protection (DEP)
3/2/2023**

1. Section 5-101(e)(1) of the Natural Resources Article, changing the definition of "forest". DEP understands that this change is to parts of the Natural Resources Article that do not impact the definition of "forest" under the Forest Conservation Act (FCA) or

local programs authorized under the FCA. However, there needs to be some assurance that this definition will not be used to determine forest or canopy coverage for the baseline or subsequent analysis to determine compliance with FCA.

2. Sections 5-1606.1(b) and 5-101(e)(1) of the Natural Resources Article, approving local programs. The methods that will be used to determine baseline forest cover and changes in forest cover must be clarified and include only what is required to be reported in each jurisdiction's annual report. The annual report only includes those properties subjected to the FCA. If all forest cover is included in the baseline and subsequent analysis, then it will most likely decline due to forest lost to activities not regulated by the FCA.

Additionally, flexibility for local programs to adopt provisions specific to their jurisdiction's conditions that would allow them to meet State requirements is essential and should be maintained. For example, pending local legislation in Montgomery County proposes a tiered approach with four levels of ratios paired with increases in the thresholds that should provide incentives to retain forests, as well as increases in forest cover on lands subject to the local program.

3. Sections 5-1607(b)(3)(iii) and 5-101(e)(1) of the Natural Resources Article, enhancement of existing forest and supplemental planting. This option for mitigation is great. It has always been in the law and should be used more to increase the health and vigor of forests under stress from the over-abundance of deer, non-native invasive species, climate change, and use by people. The local programs should continue to have flexibility on establishing parameters based on local conditions.
4. Sections 5-1607(c)(2) and 5-101(e)(1) of the Natural Resources Article, variance review of certain trees and conditions. Broadening the trees, forests, buffers, and other conditions subject to variances before disturbance can occur without improving the variance review procedures and strengthening mechanisms to implement protections will result in more application requirements and slower reviews without much to show for the effort. Another option for discouraging disturbance to these priority trees and forests would be to increase mitigation ratios for these specific conditions. For example, disturbance to any parcel with historic significance or rare, threatened, and endangered species could be subject to a 2:1 or 3:1 ratio. This is less subjective and onerous than current variance procedures.
5. Section 5-1602(b)(5) of the Natural Resources Article, removing exemption for clearing or cutting forests on land outside of rights-of-way for electric generating stations. These bills would remove the exemption from certain parts of the FCA, requiring development activity for electric generating stations to fully comply with the FCA. This aims to enhance incentives to find alternative sources of electricity and is consistent with Montgomery County's Climate Action Plan.
6. Section 8-211 of the Tax Property Article, tax incentive for retaining forested land. Given fragmentation and parcelization (i.e., subdivision of lots), this change is helpful.

SB 526, FWA, OCE Testimony, JF, LS23.pdf

Uploaded by: Victoria Venable

Position: FWA



FREDERICK COUNTY GOVERNMENT
OFFICE OF THE COUNTY EXECUTIVE

Jessica Fitzwater
County Executive

SB 526 - Natural Resources – Forest Preservation and Retention

DATE: March 2, 2023
COMMITTEE: Senate Education, Energy, and the Environment Committee
POSITION: Favorable
FROM: The Office of Frederick County Executive Jessica Fitzwater

As the County Executive of Frederick County, I respectfully request a favorable report on SB 526- Natural Resources – Forest Preservation and Retention with the inclusion of our attached amendments.

Improving state forest conservation programs including the Forest Conservation Act and the Forest Conservation Fund is a priority of Frederick County Government. In my previous role as a councilperson, I worked hard with stakeholders across the county to enact a strong and balanced local forest conservation ordinance. Balancing economic growth with sustainability and conservation has been a core ethos of mine and will be a cornerstone of my administration. I am proud of the strong conservation policies Frederick County has enacted and commend the State's effort to study and improve statewide conservation practices.

Based on robust conversations with my staff in multiple divisions including the Division of Planning and Permitting and the Division of Energy and Environment, as well as the bill sponsor, I believe this bill will be a strong step forward for statewide forest conservation efforts. To help ensure that statewide forest conservation policies are feasible for county and local governments, I believe there are a few minor amendments (see attached) that should be made to SB 526.


First, we believe changes should be made to the exemptions to “qualified conservation,” listed on pages 3 and 4. It is understandable that the bill sponsor and the advocates do not want land that is not at risk for development to be included in the forest banking program, with the current bill language, the protection of priority retention areas would be prohibited. Our amendments would identify specific target areas that are included in the forest banking program as a way to prioritize conservation in high-need habitats while not unduly limiting what projects qualify. This is a policy Frederick County has adopted and has been a successful tool in maximizing the impact of our conservation efforts.

Second, based on feedback from leaders in several municipalities in Frederick County, the deadlines for use of monies in the Forest Conservation Fund should be adjusted to provide sufficient time to effectively use these funds for reforestation or afforestation projects. While we understand the need to provide a timeframe for these funds to ensure they are used properly and efficiently, the current 2-year timeline has been problematic for smaller municipalities that want to invest in conservation projects but need more time to accrue the necessary funds and plan and execute qualifying projects. Frederick County Government supports legislation (HB 530) to extend the timeframe that local jurisdictions have to use forest conservation funds from two

years (or three growing periods) to five years (or six growing periods). We ask that those changes be made in SB 526 as well.

You will see other technical amendments included in the testimony of Michael Wilkins, Director of the Frederick County Department of Development Review and Planning, within the Division of Planning and Permitting. These amendments include stronger definitions of “forest land” and minor exemptions to accommodate businesses that rely on tree removal for the ecological health of their crop or core purpose of their business. Please consider the inclusion of the amendments described in this testimony, as well as the amendments enumerated in Director Wilkins’ testimony.

Thank you for your consideration of SB 526. I urge the committee to give this bill with a favorable report.



Jessica Fitzwater, County Executive
Frederick County, MD

Requested Amendments

AMENDMENT 1:

Page 3 – 4 section 5-1601. (gg)

(2) Replace IS NOT LOCATED ON LAND FOR WHICH and subsections (I) through (IV) with:

(2) WILL PROVIDE BUFFERS FOR STREAMS, CREEKS, FLOODPLAINS, WETLANDS OR OTHER HYDROLOGICALLY SENSITIVE AREAS, HABITATS FOR RARE, THREATENED, OR ENDANGERED SPECIES, HABITATS FOR INTERIOR DWELLING BIRD SPECIES, AND OTHER AREAS DETERMINED BY THE DEPARTMENT THAT FURTHER THE JURISDICTIONS FOREST CONSERVATION AND ECOLOGICAL ENHANCEMENT GOALS.

AMENDMENT 2:

5-1610.

(b) There is a Forest Conservation Fund in the Department.

(e) (1) The Department shall accomplish the reforestation or afforestation for which the money is deposited within [2] **5** years or [3] **6** growing seasons, as appropriate, after receipt of the money.

(2) Money deposited in the Fund under subsection (c) of this section shall remain in the Fund for a period of [2] **5** years or [3] **6** growing seasons, and at the end of that time period, any portion that has not been used **OR ENCUMBERED** to meet the afforestation or reforestation requirements shall be returned to the person who provided the money to be used for documented tree planting in the same county or watershed beyond that required by this subtitle or other applicable statutes.

AMENDMENT 3:

Page 3

(e) (1) “Forest land” means [a biological community dominated by trees and other woody plants that are capable of producing timber or other wood products with a stocking of at least 100 trees per acre with at least 50% of those trees having a 2-inch or greater diameter at 4.5 feet above the ground] **A CONTIGUOUS PATCH OF NATIVE (or predominantly native) TREES THAT IS AT LEAST 10,000 SQUARE FEET IN SIZE EXHIBITING AT LEAST ONE TRANSECT OF AT LEAST 35 FEET IN WIDTH**

AMENDMENT 4:

Page 3

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SB 526 - UNF- MML.pdf

Uploaded by: Angelica Bailey

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

March 2, 2023

Committee: Senate Education, Energy, and the Environment

Bill: _____ SB 526 – Natural Resources – Forest Preservation and Retention

Position: Oppose

Reason for Position:

The Maryland Municipal League respectfully opposes SB 526, which makes significant changes to the Forest Conservation Act. We join our local government partners at the Maryland Association of Counties (MACo) and echo many of their concerns, but the following points are particularly significant to our members:

- Forest Con Thresholds. This bill establishes forest conservation thresholds for agricultural and resource areas, medium, high-density, mixed-use and planned unit development areas, commercial and industrial use areas, and institutional development areas. The forest conservation threshold changes to a ratio of 2 acres planted for every 1 acre removed. Municipalities are still challenged by the urban, dense nature of most of our jurisdictions and are unsure whether a 2:1 ratio is achievable, especially given the value and cost of land located inside a municipality, which is primarily designated for residential and commercial development. While municipalities go to great lengths to protect urban forests and maintain tree canopies in their cities and towns, due to the urban nature of most municipalities, it becomes more challenging to identify and site larger tracts of land to be designated for reforestation. It has been suggested by our membership that instead, there should be a demarcation between urban and rural land use and utilize a 1:1/4 acre reforestation standard in place for areas located inside Priority Funding Areas (PFAs).
- Mitigation Banking. The Harry Hughes study removed mitigation banking. This bill reauthorizes it, which we appreciate, but our members are concerned about how much forest will quality.
- Quantity Over Quality. This bill places a focus on the quantity of trees, rather than the quality of forests. The pervasiveness of invasive species, for example, is a significant factor in forest health. Clear cutting and development play a part in deforestation, but we also need to address the presentation/eradication of invasive species. The definition of “forest land” would need

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410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.md-municipal.org

to be reexamined as well; the current definition does not exclude invasive species, so local governments would be required to replant invasive species under the current draft.

- FCA Manual. Although the Forest Service within the Department of Natural Resources administers the FCA, it is primarily implemented on the local level. Some municipalities have established their own municipal FCA, while others have elected to follow their county FCA regulations. However, the state FCA manual has not been reviewed since 1997. The League supports the updating of the FCA technical manual every ten years.

For these reasons, the Maryland Municipal League opposes SB 526. However, we are confident that further discussions will generate workable solutions that will enable us to change our position. We look forward to working with the Sponsors and this Committee towards a mutual goal of effective and pragmatic forest conservation in Maryland.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns

Angelica Bailey Thupari, Esq.

Bill Jorch

Justin Fiore

Chief Executive Officer

Director of Advocacy & Public Affairs

Director of Public Policy

Manager of Government Relations

MBIA Letter of Opposition SB 526.pdf

Uploaded by: Lori Graf

Position: UNF

March 1, 2023

The Honorable Brian J. Feldman
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: MBIA Letter of Opposition SB 526 Natural Resources – Forest Preservation and Retention

Dear Chairman Feldman:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 526 Natural Resources – Forest Preservation and Retention**. MBIA **Opposes** the Act in its current version.

This bill ~~redefines~~ ~~amends~~ amends the ~~term definition of “Priority Forest”~~ “Priority Forest” to add thousands of additional forest acres ~~to the “Priority Forest” definition~~. Currently across the State of Maryland mitigation banks are becoming less and less available. New banks stopped being established after the passage of HB 991 in 2020-2021 which means that the amount of mitigation banking available to developers is decreasing. This bill would increase the required mitigation to 2:1 and up to 8:1 for projects ~~in the that impact~~ priority forest area which includes ~~the ill-defined~~ “contiguous forest” a term that has no defined threshold. This requirement would be impractical to meet for on-site mitigation and it will quickly require that projects use the available forest mitigation banks. This will force projects to move to paying a fee-in-lieu of mitigation driving up the cost of housing ~~even~~ while Maryland struggles to bring down prices and make housing more accessible to residents of the state.

The ~~Park and Planning Commission has also noted that~~ bill also amends the location requirements for new mitigation banks based on preservation. ~~could and in some cases nearly~~ Nearly all rural and agricultural areas will be off limits for these types of mitigation banking. The bill requires that qualified conservation not must be established in areas where subdivisions are not allowed and where state or local laws prohibit subdivisions. This prohibits nearly all of the Prince Georges County Rural and Agricultural areas ~~out of bounds~~ for tree banking ~~and prohibits the area in which most of those banks are located~~. Taking away an important incentive currently in place to preserve large tracts of forest by unregulated entities.

The new requirements are designed to promote forest conservation ~~in areas~~ in counties where the majority of the state population resides even though the recently released forest technical study showed that the forest has remained stable stabilized state-wide ~~over the period in which the study was conducted~~ while the population grew during the time frame studied. We should target development to where its needed. Maryland currently faces an estimated 120,000 housing unit shortage and we should incentivize development in the areas in which the majority of the population wants to live as long as it can be done by expanding forest in areas in which it is feasible to expand. As it stands this bill could halt numerous projects already in development providing desperately needed housing stock. The bill contains no transition or grandfathering language which will force projects to re-work and resubmit their forest conservation plans adding additional time and expense to the project.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Education, Health & Environmental Affairs Committee

- ~~Since the technical study came out now goal is net forest gain~~
- ~~Tweaks applying almost solely to development~~
- ~~Creates a new calculation~~
- ~~Redefines Priority Forest adds new criteria~~
- ~~Contiguous forest is priority forest still, no definition~~
- ~~Need to apply for a variance for a newly defined forest~~
- ~~Not allowed by law to impact the priority forest~~
- ~~Adds court time~~
- ~~If you do impact priority forest at all, even old forest 2:1 mitigation~~
- ~~If priority forest is under conservation threshold. If you remove below the threshold 8:1 only applies to offsite banking in priority forest~~
- ~~Mitigation banking so high you cannot bank on site.~~
- ~~Banking availability is decreasing~~
- ~~No transition or grandfathering, projects already started will be subject to the new criteria~~
- ~~Counties are required to adopt if they can't show that they aren't losing forest~~
- ~~Everyone lives and works in heavily populated areas~~
- ~~Forest Loss has stabilized during the time period for the study~~
- ~~Lots of projects could be killed~~
- ~~Could conflict with local laws which are not designed for new state goals could conflict with county affordable housing priorities~~
- ~~Only banks that can be used before 2020~~
- ~~Will accelerate fee in lieu making development more expensive~~
- ~~We can produce a net forest gain without unnecessarily adding development cost~~

SB 526 Testimony.pdf

Uploaded by: Matthew Wessel

Position: UNF

March 1, 2023

Matthew Wessel, PLA, ISA Certified Arborist

Testimony for SB526/HB723

(Natural Resources- Forest Preservation and Retention)

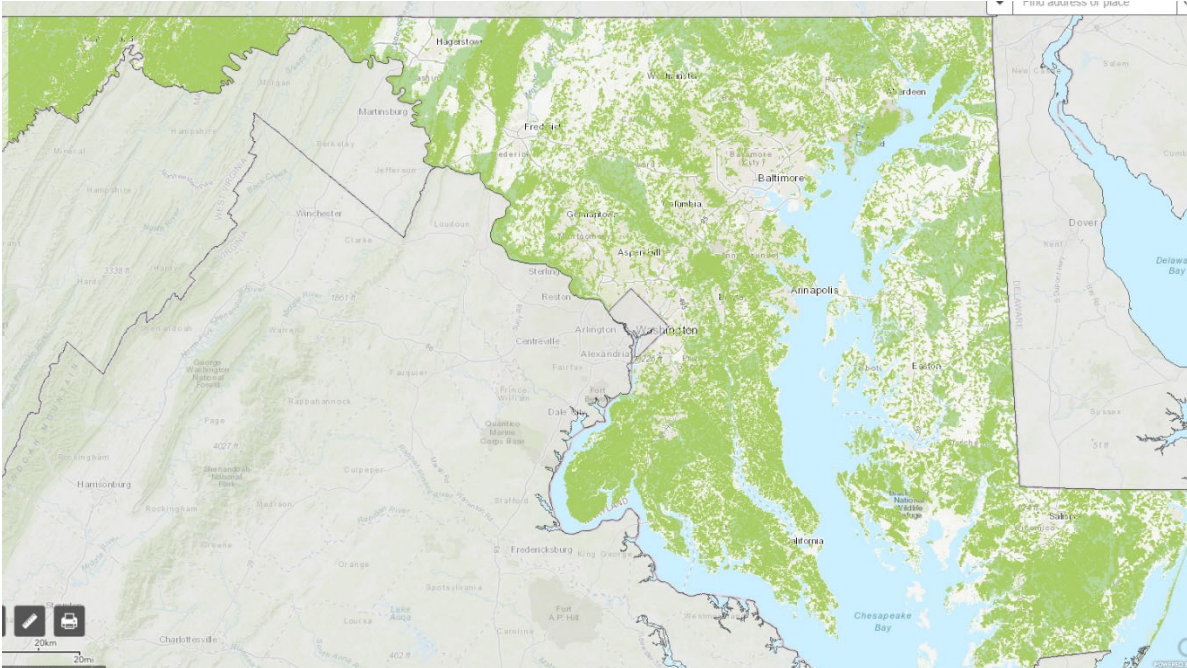
My name is Matthew Wessel. I chair the Environmental Committee for the Maryland Building Industry Association (MBIA). I'm a landscape architect and ISA Certified Arborist with 23 years of experience entitling projects and implementing the forest conservation act in several Maryland counties and municipalities. 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.

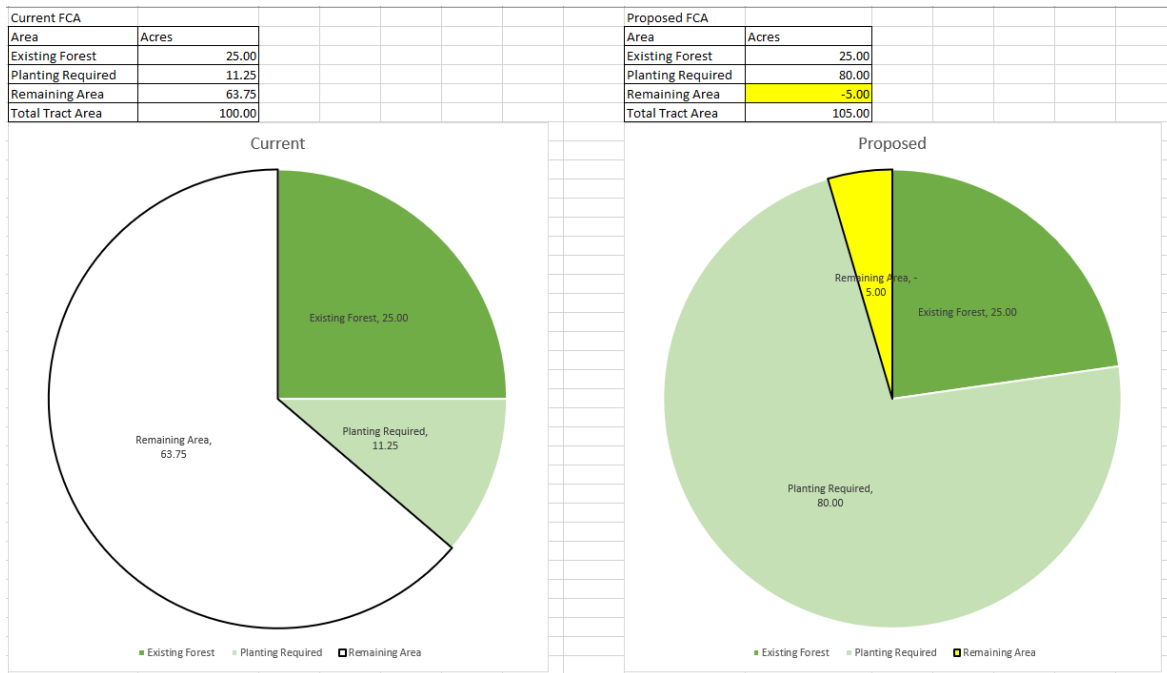


<https://gisapps.dnr.state.md.us/coastalatl2019/MERLIN/index.html>

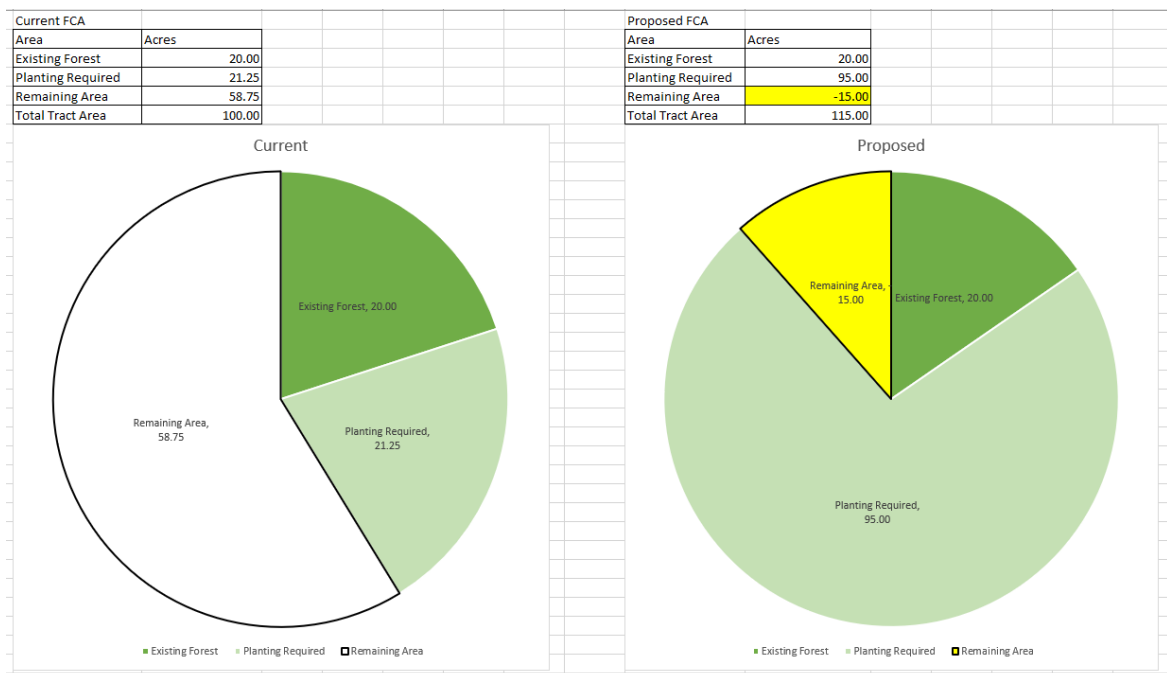
Additionally, the bill **requires 2:1 Mitigation for impacts to priority forest** including “contiguous forest”. This would result in instances where more mitigation would be required than area available to meet on-site.

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.

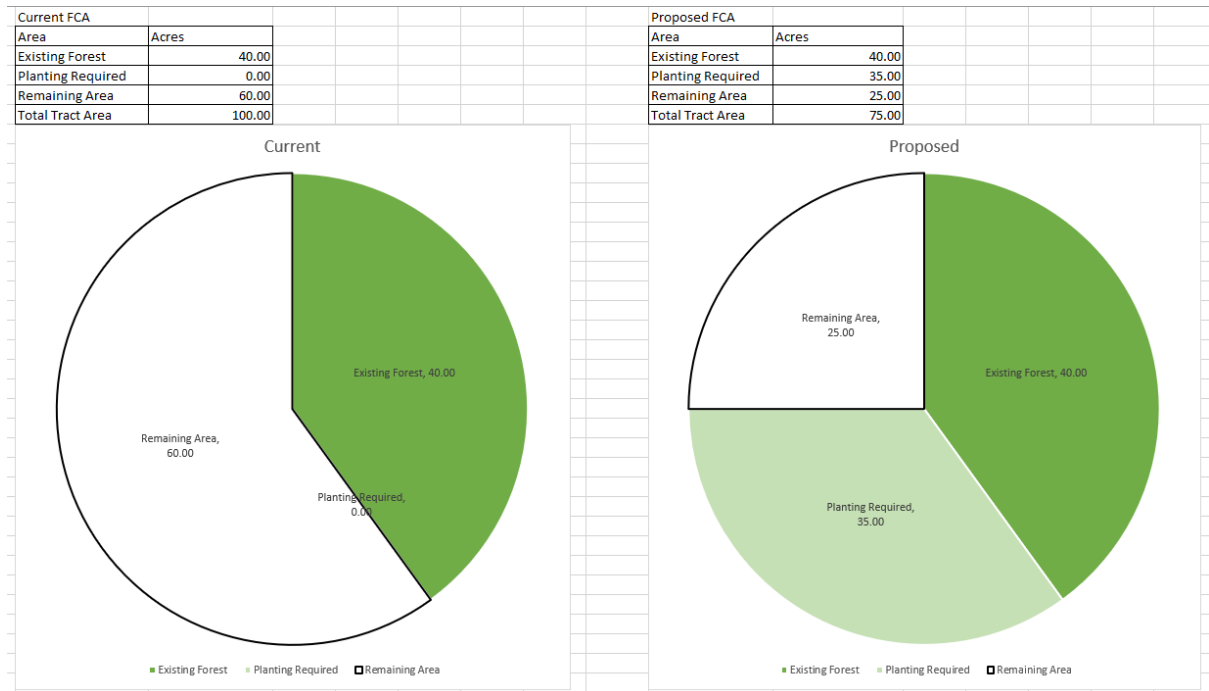
Clearing Down to the Conservation Threshold



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.

SB 526 - Natural Resources - Forest Preservation a

Uploaded by: Tom Ballentine

Position: UNF



March 1, 2023

The Honorable Brian J. Feldman, Chair
Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, MD 21401

Unfavorable: SB 526 – Natural Resources – Forest Preservation and Retention

Dear, Chair Feldman and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate, recommend your unfavorable report on Senate Bill 526.

Senate Bill 526 proposes major changes to the Forest Conservation Act that will significantly reduce the buildable area on land zoned for development and further reduce the remaining development capacity in Maryland's Priority Funding Areas.

The recently released Technical Study on the Changes in Forest Cover and Tree Canopy in Maryland found that the state's forest cover has been stabilizing over the last 10 years and that tree canopy has increased. The results of the study show potential to close remaining gaps through means that will not have the negative land use implications presented by Senate Bill 526.

As currently written, the Forest Conservation Act uses a sliding scale of conservation and replanting values that are designed to preserve forest but also allow land designated for development to perform as intended under its zoning and use classification. Senate Bill 526 would make the presence of forest – not zoning - the most important factor in the form and density of future development. Its passage would further deplete the remaining development capacity in Maryland's Priority Funding Areas and make it extremely difficult for these areas to function as the location for future employment and household growth.

NAIOP's specific concerns include:

- The definition of Priority Forest is significantly broadened to include tree stands, shrubs, tree canopy and other environmental features. The definition is broad enough to include most existing forest.
- Priority Forest cannot be cleared during development without approval of a variance. The standard of review to approve a variance is, by design, difficult or impossible to meet meaning that most forest cannot be cleared even if it were to be replanted at the higher ratios established in the bill.
- Replanting requirements for forest cleared during development are sharply increased. The stacking of mitigation ratios for clearing below retention thresholds, Priority Forest and retention off-site results in more land area dedicated to on-site replanting and reduced buildable area and can result in mitigation ratios as high as 8:1.
- The creation and use of forest mitigation banks is limited, making off-site mitigation difficult. This is critical because urban redevelopment under the Act is required to create new forest if none exists on the site. This is often accomplished through forest banking resulting in better environmental and land use outcomes.

For these reasons, NAIOP respectfully recommends your unfavorable report on Senate Bill 526.

Sincerely,

A handwritten signature in blue ink that reads "Tom Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: Senate Education, Energy, and the Environment Committee Members
Nick Manis – Manis, Canning Assoc.

HB723_ SB526 M-NCPPC FINAL_LOI_(3.1.2023).pdf

Uploaded by: Jordan BaucumColbert

Position: INFO



LETTER OF INFORMATION

Bill: HB723/SB526 Natural Resources – Forest Preservation and Retention

Date: March 1, 2023

Contact: Debra Borden, General Counsel
Jordan Baucum Colbert, Government Affairs Liaison

What The Bill Does: This bill proposes major changes to the Natural Resources Article Title 5 (Forests and Parks), Subtitles 1 (In General) and 16 (Forest Conservation). All of the proposed changes will have widespread implications for Forest Conservation and Tree Canopy programs in both Montgomery and Prince George’s Counties, which in turn will affect the counties’ master plan goals, specifically for economic development and affordable housing. At its core, the bill seeks to significantly increase required mitigation for forest conservation; it does so while inviting potential negative unintended consequences.

The amendment proposes the following major changes: 1) up to an 8-fold increase in the minimum replacement requirement for forest cleared; 2) add sweeping location requirements to limit the use of qualified conservation (retention tree banks); 3) revised variance criteria which makes it more difficult to obtain.

Our Concerns: The Commission is concerned about this bill because the proposed changes have the potential to negatively impact both Montgomery and Prince George’s Counties in ways that are significant and, we believe, unintended.

The proposed amendments would make it difficult for development projects to: reasonably replace forest cleared on-site or off-site, establish and/or use off-site mitigation credits (forest conservation bank) to mitigate for forest cleared, and obtain approval of a variance. The amendments may appear to provide flexibility, but the alternatives proposed contain several impediments that would significantly limit the ability to build on property in accordance with the zoning and allowable uses. It would be very difficult to establish a “reasonable developed area”, and because off-site mitigation is a private market, the feasibility of establishing tree banks would significantly decrease.

Office of the General Counsel

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The **location criteria for the banks** are problematic. Specifically, qualified conservation must be established in areas where subdivisions are not allowed and where state or local laws prohibit subdivisions. For Prince George's County, this includes areas within SGA Tier IV, Sewer Category 6. This location criteria puts **almost all** of the Rural and Agricultural area of Prince George's County out of bounds for tree banking, and this area is precisely where a majority of the county's retention banks (approximately 4800 total) are located. **The Rural and Agricultural area is the most significant to maintaining the county's rural character, preserving/protecting large tracts of contiguous forest, and protecting the county's most sensitive ecological areas. The banking program has for decades been very effective and successful at meeting these goals.**

The sunset clause to use or establish the banks by June 30, 2024, remains in the text of the law and should be removed. **If these banks cannot be used after 2024, property owners are incentivized to seek other options to profit from their large tracts of wooded land, including, but not limited to solar arrays which require a significant amount of vegetation removal.**

The notion that tree preservation is only useful if it utilizes property which is "at risk" for imminent development is not one that holds true from county to county. Every county is different in this regard. The developed areas in Prince George's and Montgomery County have all but been determined at this point in their evolution. Our focus is on protecting our Rural and Agricultural areas by giving property owners **income-generating choices** that don't involve clearing forest, or that affirmatively and perpetually protect existing forest.

The **increase in the replacement ratio** is also problematic. The bill will increase forest conservation minimum replacement requirements in the county from 0.25:1 to 1:1 (in general) and 2:1 (for newly defined priority forests) unless DNR approves a decreased rate as an alternative method that achieves a no net loss. Most, if not all, pending development projects in Prince George's County will experience either a 4-fold or 8-fold increase in their mitigation requirement. It should be noted that priority forest, which consists of forest that contain various environmental features, **encompass most of the forest** in the county. As a result, a significant number of projects will be subject to the 2:1 replacement ratio (a 8-fold increase over today's ratio). Montgomery County is already close to "no net loss", and updates to the reforestation ratios for the proposed FCA legislation currently before the Montgomery County Council were analyzed, we found that this approach had the potential to make development extremely expensive. The proposed amended definition of priority forest will also require more preservation and planting of stream buffers. This seems an excessive and abrupt increase for projects that may already be in the development pipeline.

In addition to the significant increase in forest conservation replacement requirements, the bill adds new criteria for impacts to priority forest areas that will trigger **a required variance** for clearing. The variances must meet strict findings in order to be approved, which may prove to be difficult if not impossible to meet. The counties have other regulations that protect environmental features in the same location as forest that must go through a separate process to request and justify impacts to those features. This revision would make the process redundant and time-consuming.

For these and other reasons, the Commission urges the legislature to consider a summer study so that the counties can have the opportunity to collaborate on a comprehensive update of the State's Forest Conservation Act that allows flexibility and reflects the State's commitment to protecting our forests.