



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:

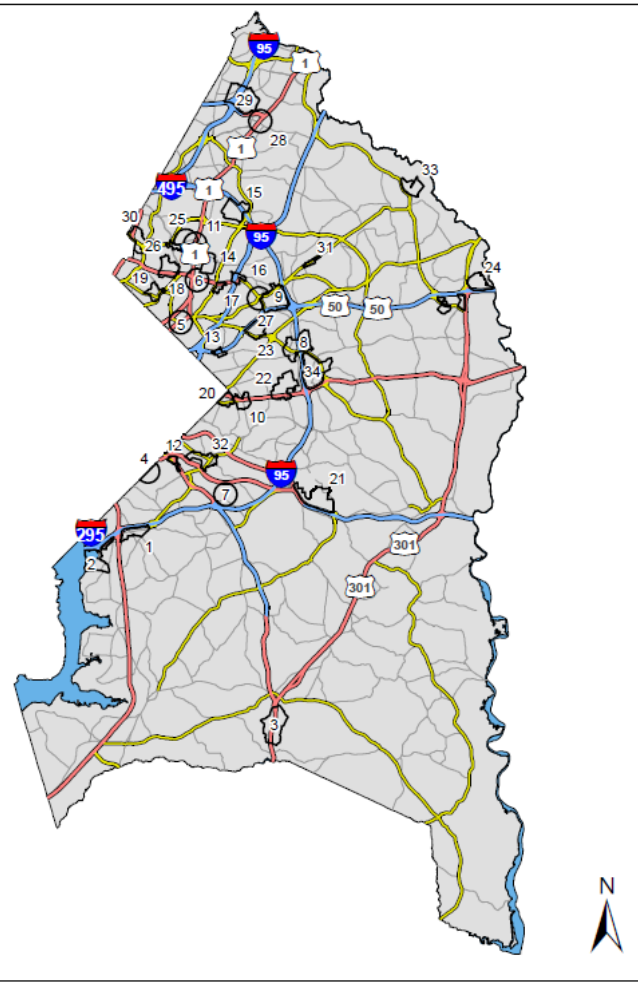
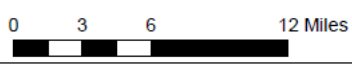
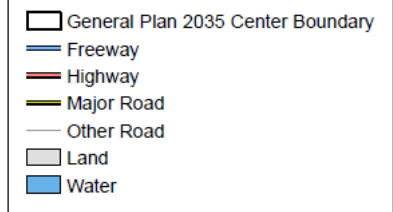
- Prioritize TOD and Town Center Development;
- Phase in the proposed higher requirements outside of priority development areas;
- Maximize utilization of existing priority woodlands, especially for TODs;
- Extend the implementation timeline; and
- Revise or eliminate the variance requirements.

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 $\frac{1}{4}$ 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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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”