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Budget and Taxation Committee

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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**

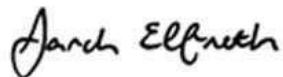
Provide for implementation timetable to allow local jurisdictions and DNR to update local forest conservation ordinances and technical guidance.

**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