



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

HB 0723 - Natural Resources – Forest Preservation and Retention

DATE: March 1, 2023
COMMITTEE: House Environment and Transportation Committee
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 HB 0723 - 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 HB 723. 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 HB 723 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 HB 723. 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 HB 723 a favorable with amendments report.

Respectfully,

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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