



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

March 1, 2023

TO: The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee

FROM: Marc Elrich
County Executive

RE: House Bill 723, *Natural Resources – Forest Preservation and Retention*
Support with Amendments

I am writing to express my support for House Bill 723, *Natural Resources – Forest Preservation and Retention*. The intent of the 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.

I note that the Forest Conservation Act (FCA) is a complex law and that 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.

I respectfully request that the Environment and Transportation Committee give House Bill 723 a favorable report with amendments that address the attached issues.

cc: Members of the Environment and Transportation Committee

Comments regarding HB 723
Developed by the Montgomery County Department of Environmental Protection
3/1/2023

1. Section 5-101(e)(1) Section 5-101(e)(1) of the Natural Resources Article, changing the definition of ‘forest.’ Montgomery County understands this change is to parts of the Natural Resources Articles that do not impact the definition of ‘forest’ within the Forest Conservation Act (FCA) or programs with local jurisdictions. 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. Section 5-1606.1(b) Section 5-101(e)(1) of the Natural Resources Article, approving local programs. The methods for determining baseline forest cover and changes in forest cover must 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 forest cover 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 amendments in Montgomery County propose 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. Section 5-1607(b)(3)(iii) Section 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. Section 5-1607(c)(2) Section 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 would 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 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, this change is helpful.