



March 30, 2026

The Honorable, Marc Korman, Chair
House Environment and Transportation Committee
250 Taylor House Office Building
Annapolis, Maryland 21401

Favorable w Amendment: SB 431 - Endangered and Threatened Species and Migratory Birds Regulations

Dear Chair, Korman and Committee Members:

The NAIOP Maryland Chapters represent approximately 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate. On behalf of our member companies, I am writing to recommend amendments to SB 431.

While SB 431 mirrors the federal Endangered Species Act in most respects there are several provisions that need clarification and amendment in order to fully bring over the provisions in federal law.

- **Prohibition of Incidental Take of Migratory Birds** – Amendments to the bill prohibit the incidental take of migratory birds protected by Migratory Bird Treaty Act beginning October 1, 2026. This change could result in a significant expansion of regulated activities for land development, construction, utilities and existing buildings, There is no reference to best management practices or permitting structure for compliance. At a minimum, the bill should delay the effective date or make clear this provision is not enforceable until DNR issues industry specific guidance or an incidental take permitting program is in place.
- **Designation of “Essential Habitats”** – The bill grants the Secretary broad authority to designate areas as “essential habitats” for endangered and threatened species. Federal law establishes criteria for habitat designation through a series of biological findings and limitations that are not carried over by SB 431.
- **Definition of “Harm”** – SB 431 codifies the definition of “harm” in statute and pairs it with new authority to designate state level “essential habitat.” Without clarification, referencing “wildlife” in statute risks expanding the scope of harm beyond listed species—an outcome inconsistent with the federal ESA model. The definition of Harm should be clarified to apply only the listed threatened and endangered species.

Thank you for considering NAIOP’s point of view on SB 431

Sincerely,

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

cc: Environment and Transportation Committee Members
Nick Manis – Manis, Canning Assoc.