



LETTER OF INFORMATION

Bill: HB723/SB526 Natural Resources – Forest Preservation and Retention

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What The Bill Does: This bill proposes major changes to the Natural Resources Article Title 5 (Forests and Parks), Subtitles 1 (In General) and 16 (Forest Conservation). All of the proposed changes will have widespread implications for Forest Conservation and Tree Canopy programs in both Montgomery and Prince George’s Counties, which in turn will affect the counties’ master plan goals, specifically for economic development and affordable housing. At its core, the bill seeks to significantly increase required mitigation for forest conservation; it does so while inviting potential negative unintended consequences.

The amendment proposes the following major changes: 1) up to an 8-fold increase in the minimum replacement requirement for forest cleared; 2) add sweeping location requirements to limit the use of qualified conservation (retention tree banks); 3) revised variance criteria which makes it more difficult to obtain.

Our Concerns: The Commission is concerned about this bill because the proposed changes have the potential to negatively impact both Montgomery and Prince George’s Counties in ways that are significant and, we believe, unintended.

The proposed amendments would make it difficult for development projects to: reasonably replace forest cleared on-site or off-site, establish and/or use off-site mitigation credits (forest conservation bank) to mitigate for forest cleared, and obtain approval of a variance. The amendments may appear to provide flexibility, but the alternatives proposed contain several impediments that would significantly limit the ability to build on property in accordance with the zoning and allowable uses. It would be very difficult to establish a “reasonable developed area”, and because off-site mitigation is a private market, the feasibility of establishing tree banks would significantly decrease.

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The **location criteria for the banks** are problematic. Specifically, qualified conservation must be established in areas where subdivisions are not allowed and where state or local laws prohibit subdivisions. For Prince George's County, this includes areas within SGA Tier IV, Sewer Category 6. This location criteria puts **almost all** of the Rural and Agricultural area of Prince George's County out of bounds for tree banking, and this area is precisely where a majority of the county's retention banks (approximately 4800 total) are located. **The Rural and Agricultural area is the most significant to maintaining the county's rural character, preserving/protecting large tracts of contiguous forest, and protecting the county's most sensitive ecological areas. The banking program has for decades been very effective and successful at meeting these goals.**

The sunset clause to use or establish the banks by June 30, 2024, remains in the text of the law and should be removed. **If these banks cannot be used after 2024, property owners are incentivized to seek other options to profit from their large tracts of wooded land, including, but not limited to solar arrays which require a significant amount of vegetation removal.**

The notion that tree preservation is only useful if it utilizes property which is "at risk" for imminent development is not one that holds true from county to county. Every county is different in this regard. The developed areas in Prince George's and Montgomery County have all but been determined at this point in their evolution. Our focus is on protecting our Rural and Agricultural areas by giving property owners **income-generating choices** that don't involve clearing forest, or that affirmatively and perpetually protect existing forest.

The **increase in the replacement ratio** is also problematic. The bill will increase forest conservation minimum replacement requirements in the county from 0.25:1 to 1:1 (in general) and 2:1 (for newly defined priority forests) unless DNR approves a decreased rate as an alternative method that achieves a no net loss. Most, if not all, pending development projects in Prince George's County will experience either a 4-fold or 8-fold increase in their mitigation requirement. It should be noted that priority forest, which consists of forest that contain various environmental features, **encompass most of the forest** in the county. As a result, a significant number of projects will be subject to the 2:1 replacement ratio (a 8-fold increase over today's ratio). Montgomery County is already close to "no net loss", and updates to the reforestation ratios for the proposed FCA legislation currently before the Montgomery County Council were analyzed, we found that this approach had the potential to make development extremely expensive. The proposed amended definition of priority forest will also require more preservation and planting of stream buffers. This seems an excessive and abrupt increase for projects that may already be in the development pipeline.

In addition to the significant increase in forest conservation replacement requirements, the bill adds new criteria for impacts to priority forest areas that will trigger **a required variance** for clearing. The variances must meet strict findings in order to be approved, which may prove to be difficult if not impossible to meet. The counties have other regulations that protect environmental features in the same location as forest that must go through a separate process to request and justify impacts to those features. This revision would make the process redundant and time-consuming.

For these and other reasons, the Commission urges the legislature to consider a summer study so that the counties can have the opportunity to collaborate on a comprehensive update of the State's Forest Conservation Act that allows flexibility and reflects the State's commitment to protecting our forests.