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*Saving a National Treasure*

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October 4, 2022

The Honorable Gabe Alborno, President  
Montgomery County Council  
100 Maryland Avenue, 6th Floor  
Rockville, MD 20850

**REGARDING: Bill 25-22 – Forest Conservation – Trees**  
**POSITION: Support with Amendment**

Dear President Alborno and members of the County Council:

The Chesapeake Bay Foundation appreciates your timely consideration of proposed changes to the County's Forest Conservation Law. Better protecting tree cover is critical to a healthy economy, clean water, and resilient communities in Montgomery County.

Montgomery County continues to lose tree cover to land development and is no longer a leader in protecting forests. Data from the Chesapeake Bay Program show that the County is responsible for the largest loss of forest outside of Southern Maryland over the past decade, a trend which is likely to continue through at least 2025.

Neighboring counties have strengthened their local forest conservation laws beyond Montgomery County's requirements. In these jurisdictions, land development has continued successfully while net forest loss has lessened or ceased entirely.

As forwarded by the Planning Commission, Bill 25-22 approaches some of these protections. However, **CBF concurs with the Montgomery County Forest Coalition that further strengthening is needed to fully implement the Comprehensive Plan and restore the County's position as a leader on forests for climate and clean water.**

In particular, we urge the Council to add protections for the highest priority forest stands remaining on developable land in the County. Since 2013, remote sensing data from the Chesapeake Conservancy show the rate of fragmentation and encroachment of contiguous forest in Montgomery is the second highest in the state. This pressing matter was not addressed by the Planning Commission in any form. The Council could:

- Require a variance for clearing contiguous forest areas and other priority woodlands;
- Increase the mitigation ratio for clearing in priority forest areas to 2:1 or higher;
- Further increase the conservation thresholds in priority forest areas; and
- Compel written justification and written findings before clearing these valuable tracts.

CBF and the Forest Coalition encourage further amendments to re-establish forest ecosystems, maintain the integrity of developing watersheds, and achieve no-net-loss or even net gain of forest, which are described in our letter to the Planning Commission of April 28, 2022. This letter is enclosed for your review and consideration as part of the Council's record on this bill.

We appreciate the hard work and accessibility of County staff throughout the drafting process. CBF supports many of the procedural improvements contained in the bill in pursuit of a clear review process along with reduced exemptions and planting of stream valleys.

We would welcome the opportunity to discuss Bill 25-22 in more detail with you at a work session. Please do not hesitate to contact us directly with any questions or to set up a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Fisher".

Erik Fisher, AICP  
Maryland Assistant Director  
Maryland Land Use Planner

443.482.2096  
[efisher@cbf.org](mailto:efisher@cbf.org)

Enclosure:  
CBF Comments to the Montgomery County Planning Commission, April 28, 2022



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April 28, 2022

Mr. Casey Anderson, Chair  
Montgomery County Planning Board  
2425 Reedy Drive, 14th Floor  
Wheaton, MD 20902

### RE: 'No net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations (Agenda Item #6)

Dear Chair Anderson and members of the Board:

The Chesapeake Bay Foundation appreciates this opportunity to comment on proposed changes to Montgomery County's Forest Conservation Law. Protecting tree cover is critical to a healthy economy and ecology in Montgomery County. Forests filter pollutants, control flooding, prevent erosion, and cool streams. Mature, contiguous forests also provide essential human health and natural habitat benefits that cannot be replicated in developed areas. As such, we appreciate the County's interest in updating its forest protections and recognize the hard work of your staff that is evident throughout the bill and accompanying regulations. We support many of the procedural improvements proposed in pursuit of a clear review process along with reduced exemptions, enhanced requirements for afforestation of smaller sites, and planting of stream valleys.

**We also concur with the Montgomery County Forest Coalition that the proposed ordinance must be further amended to achieve 'no net loss' of forest cover. Specifically, amendments are needed to:**

- Minimize the loss of forests considered priority for protection;
- Clarify the standards for establishing forest ecosystems;
- Increase replanting ratios to offset deductions elsewhere in the formula;
- Ensure that most replanting requirements are satisfied by actual plantings and within the local watershed; and
- Better protect areas already set aside for forest conservation.

**These amendments will stop the ongoing net reduction of forest in Montgomery County and more equitably protect clean water, climate, and communities in a manner consistent with adopted and pending County plans.**

Statutory changes to ensure no-net-loss of forest are firmly rooted in county plans. Montgomery County's draft Comprehensive Plan, entitled *Thrive Montgomery 2050*,

highlights forest protection as a key indicator and driver of progress toward environmental and social goals. *Thrive* identified forest conservation regulations as providing a “strong framework for the protection of natural resources,”<sup>1</sup> but noted that existing regulations will not be enough to address climate change and calls further action “critical” to develop “more creative strategies to build resilience and improve sustainability.”<sup>2</sup> Indeed, a key measure of whether *Thrive* succeeds or fails will be the “acres of farmland, natural habitats, forests and environmentally sensitive areas protected.”<sup>3</sup>

These forested acres are presently in decline. High-resolution land cover data and draft modeling from the Chesapeake Bay Program projects Montgomery County could total more than 5,000 acres of forest loss between 2013 and 2025.<sup>4</sup> This would represent the fifth largest clearing in the state and the largest loss outside of southern Maryland. These reductions could also further entrench disparities in tree cover that raise equity concerns. On average, Montgomery County neighborhoods of color and those with low-income residents have fewer trees and forests – up to a 14-point disparity in canopy coverage.<sup>5</sup>

The County’s *Water Resources Functional Plan* identifies “the loss and degradation of forest, wetland, and other natural areas”<sup>6</sup> as a primary threat to clean water. In response, the Plan places a priority on “enhancing stewardship of natural areas including resource protection, conservation, enhancement, and restoration...”<sup>7</sup> This goal is expressed in two recommendations to strengthen forest protections:

4.1 Increase forest, wetland, meadow, stream buffer, and urban tree canopy area countywide, especially in watersheds with regulatory limits, water quality impairments, or Tier II designations.

4.3 Revise the Forest Conservation Laws and Regulations and Trees Technical Manual as needed to increase the speed and success of reforestation efforts.<sup>8</sup>

The Maryland State Data Center forecasts that 170,000 new residents could move into the County by 2045.<sup>9</sup> Montgomery County must implement its master planning recommendations to strengthen forest conservation laws and prevent further loss in the face of such development

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<sup>1</sup> *Thrive Montgomery 2050*, p. 14

<sup>2</sup> *Ibid.*, p. 136

<sup>3</sup> *Ibid.*, p. 39

<sup>4</sup> Chesapeake Bay Program. 2025 Land Use Forecast Scenarios. Accessed April 27, 2022 at [https://www.chesapeakebay.net/channel\\_files/25596/counties\\_v6\\_p6\\_2025wtrshd.csv](https://www.chesapeakebay.net/channel_files/25596/counties_v6_p6_2025wtrshd.csv)

<sup>5</sup> American Forests. *Tree Equity Score: Montgomery County*. Accessed April 26, 2022 at <https://treeequityscore.org/reports/place/montgomery-county-md/#11.41/38.8938/-77.0146>

<sup>6</sup> *Water Resources Functional Plan*, p. 12

<sup>7</sup> *Ibid.*, p. 31

<sup>8</sup> *Ibid.*, pp. 50-51

<sup>9</sup> Maryland Department of Planning. *Projections to 2045: Populations and Households (12/20)*. Accessed April 27, 2022 at [https://planning.maryland.gov/MSDC/Pages/S3\\_Projection.aspx](https://planning.maryland.gov/MSDC/Pages/S3_Projection.aspx)

pressure. As part of the comprehensive planning process, these recommendations were subject to intensive analysis, public discussion, and legislative oversight. Furthermore, state law requires consistency between local plans and local ordinances.<sup>10</sup>

### REQUESTED AMENDMENTS

As drafted, the proposed ordinance would make important positive changes to the procedural and substantive requirements that developers must abide by when building on forested land. CBF believes that additional provisions are necessary to achieve the stated goal of 'no-net-loss' of forest. Over the past few years, we have worked extensively with neighboring counties and other environmental organizations to strengthen forest conservation regulations in accordance with local goals. Many of the changes proposed by the Planning Department most closely align with updates adopted in Howard and Anne Arundel counties. While positive, neither of these counties aspired to or are expected to achieve no-net-loss. Howard County's increased replating ratios are primarily intended to prevent further transfer of forest cover out of their development envelope. Anne Arundel County, which like this proposal relies heavily on enhanced conservation thresholds, is expected to reduce forest loss by about 50%.

The Planning Department's added focus on reducing exemptions, increasing afforestation on smaller development sites and planting stream valleys will help and should be carried forward. However, CBF believes that provisions protecting priority forest, stronger replanting ratios, and clear replanting requirements that re-establish forest ecosystems are equally necessary to ensure a healthy and lasting forest footprint in Montgomery County. **As such, we urge the Planning Board to recommend the following amendments along with the draft ordinance to the County Council.** If so amended, this update to the Forest Conservation Law can be a key step to implement County plans and fulfill a critical opportunity to afford protection to the County's remaining forested lands.

*Substantial amendments are described below. The full text of amendments recommended by CBF and the Montgomery County Forest Coalition is attached, and illustrated in the enclosed chart.*

- ☐ **Update the Technical Manual to ensure re-establishment of forest ecosystems.**  
Forest clearing eliminates or degrades understory and soil health in addition to removing trees. Current replanting practices do not directly replace these critical forest features, despite current law requiring establishment of a forested 'biological community.'
- ☐ **Require a variance for clearing environmentally sensitive priority forests.**  
Forest cover dramatically enhances the protection of wetlands, floodplains, steep slopes, certain wildlife habitats, and other sensitive environmental features. Direct impacts to these features generally require a variance, and removal of tree cover associated with these features should be no exception.

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<sup>10</sup> See MD Code, Land Use, § 1-303

Anne Arundel County requires a formal zoning modification to clear these areas.

- **Increase the base reforestation ratio to 2 acres planted for every 1 acre removed.**  
As drafted, a developer must only replant ½ acre of forest for each acre cleared. Compounding this imbalance, replanting credit is granted on a straight 1:1 basis for each acre retained above the conservation threshold. On many development sites, this formula results in substantial net loss – and in some cases, zero replanting required despite clearing many acres of forest. The higher ratios of 1:1 and 2.5:1 currently proposed in the draft ordinance only apply when replanting outside a local or priority watershed. There is no guarantee that they would be applied widely enough to offset reductions elsewhere in the formula.

Carroll and Frederick counties have demonstrated no-net-loss of forest with a 1:1 ratio in place, with the retention credit removed. If the retention credit is retained, a higher ratio is likely needed.

- **Require that at least 75% of replanting obligations be satisfied by actual replanting.**  
Current law permits the preservation of existing off-site forest to satisfy replanting obligations. While conservation of existing forest stands can be valuable, heavy reliance on this practice leads to substantial net loss of forest because cleared acres are not offset by new stands.

The draft ordinance includes a narrative obligation to plant before preserving. We believe a quantitative baseline is appropriate to maintain clarity and establish a reasonable floor.

- **Increase the replanting ratio to 4:1 when outside the local watershed.**  
Replanting on or near the development site can protect steep slopes, streams, and wetlands from stormwater impacts and in some cases can re-connect priority forest areas. New plantings also help redress consequences of urbanization and low tree canopy such as flooding, heat islands, and poor air quality. When planting outside the local watershed, these environmental and community benefits are greatly reduced. Increased mitigation is necessary to help offset the loss of these benefits when trees are planted somewhere else.

Charles County has established ratios as high as 4:1 for replanting outside of local watersheds and development districts.

- **Increase the replanting ratio to 5:1 when cutting existing forest conservation easements.**  
Forest conservation easements protect woodlands established or maintained to offset past clearing. In cases where this eased forest was newly planted, it takes decades to offset the ecosystem services that were lost to the original development project. Preserved mature woodlands were accepted in-lieu of replanting, so cutting these areas represents a second loss. In both cases, a high replanting ratio is critical to ensure clearing an easement is a last resort, and account for the resultant further delay in restoring the natural functions of forest.

Once again, CBF appreciates the hard work of the Planning Board, and especially that of your staff, in preparing and reviewing these updates to the County's Forest Conservation Law. We are encouraged by the improvements already reflected in the draft, and we urge you to recommend these further amendments to the County Council.

We would welcome the opportunity to discuss this matter in more detail with you at a work session. Please do not hesitate to contact us directly with any questions or to set up a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Fisher', with a stylized, cursive script.

Erik Fisher, AICP  
Maryland Assistant Director  
Maryland Land Use Planner

443.482.2096  
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Enclosures:

1. Montgomery County Forest Coalition Proposed Amendments
2. Comparison Chart