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# Howard County

## *Internal Memorandum*

**Subject: Testimony on Council Bill No CB 62-2019; The Forest Conservation Act of Howard County**

**To: Lonnie R. Robbins, Chief Administrative Officer**

**From: Joshua Feldmark, Director of Sustainability**

**Date: November 4, 2019**

Since this bill is a “repeal and replace” we have included the attached chart which indicates every change we are proposing with this bill. We have three categories describing the reasons for each individual change – Clarification, compliance with state law, or strengthening of the act.

The Howard County Forest Conservation Act was originally passed in 1993, first updated in 1996, and then again in 1999. Despite numerous internal and external efforts, The Act has not been amended in any way since 1999. In the intervening 20 years four pieces of legislation have updated the Maryland Forest Conservation Act. Those bills are: SB 666-1999, HB 1352-2010, HB 706 – 2013, and SB 234-2019.

There are 16 changes we are proposing that are updating the Howard County Act in response to the amendments to the State Act. The biggest change of note in this category is Section 16.1205 (a) which details what on-site forest retention is required. The language we have inserted is taken directly from SB666-1999.

We have proposed nearly 40 changes to the Act that will strengthen the act. While I won’t go through each change, allow me to highlight the most impactful.

### 16.1209 Site Design Requirements

This did not previously exist in the Act. This addition requires residential developments to manage 75% of their forest obligation on-site and nonresidential developments to plant all onsite sensitive features before any other tool is used to meet the forest conservation obligation (including banks, off-site compliance, and fee-in-lieu.)

### 16.1206 (c)(2) Reforestation Calculation

Known as the reforestation ratio, this section dictates how much forest must be replanted for every acre of forest cut down. Currently for every acre cut down, you must plant  $\frac{1}{4}$  acre of new forest. This is the state minimum and the same ratio as most surrounding jurisdictions including Baltimore County, Frederick County, Harford County, Montgomery County, and Prince George’s County. We have proposed increasing that so that for each acre of forest cut down,



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you must replant one acre. In addition, if you replant the forest in the affected watershed you can replant ½ acre for every acre you cut down.

Additionally, under the existing law, whatever a project cuts down beyond the “threshold” must be replanted at two acres to every acre cut down. Under the proposal that would be increase to three acres for every acre cut down beyond the threshold. If you do this replanting in the affected watershed then you may replant two acres for every acre you cut down beyond the threshold.

### 16.1216 Variances

We have substantially improved this section of the code, first and foremost by clarifying that all variances will be granted or denied based on whether the application meets the unwarranted hardship standard. Unwarranted hardship is defined both in this proposal and in state code. Additionally, we have specified seven components that will have to be proven for an applicant to receive a variance.

For projects that require Planning Board approval the process for determining whether an applicant meets the unwarranted hardship standard will be made by the Planning Board. For all other applicants, the determination will be made collectively by the Director of Planning & Zoning, the Administrator of the Office of Community Sustainability, and the Director of Recreation & Parks.

Other proposals to strengthen the Act:

The Green Infrastructure Network will be added to development plans and it is being added as a high-priority retention area and as the highest priority for reforestation.

The definition of a forest is being increased from 35’ wide to 50’ wide.

The Forest Conservation Agreement (Developer maintenance responsibility) is being increased from two years to three years.

In the development of a residential subdivision, fee-in-lieu may be used for no more than one acre of forest conservation obligation.

### Fiscal Impact

We do not expect any fiscal impact to the County as a result of this bill.

Location of Change	Section Title	Reason for Change	Change
16.1200(b)	Short Title; Background; Purpose	Clarification	Describes the location of the Maryland Forest Conservation Act. Changed from "'§§ 5-1601 through 5-16123' to 'Title 5, Subtitle 16' of the Natural Resources Article of the Annotated Code of Maryland."
16.1201	Definitions	Clarification	Clarifies that unless terms are defined here or in the Subdivision and Land Development Regulations, they will have their usual meaning. Clarifies that definitions relate to "Subdivision and Land Development Regulations", as opposed to current language which says "Subdivision Regulations."
16.1201(a)	Definitions	Clarification	Changes "accord" to "accordance"
16.1201(b)	Definitions	Clarification	Adds definition of "COMAR"
16.1201(c)	Definitions	Clarification	Adds definition of "Critical Habitat Area"
16.1201(g)	Definitions	Strengthening	Changes minimum width of a forest from 35 to 50 feet
16.1201(g)(1)	Definitions	Clarification	Adds "of" for readability before "100 trees per acre"; Adds "tree" before "cover ratio."
16.1201(k)	Definitions	Clarification	Adds definition of "Forest Conservation Program"
16.1201(l)	Definitions	Clarification	Clarifies that mitigation banks can be created by forest retention as well as planting
16.1201(n)	Definitions	Strengthening	Defines the "Green Infrastructure Network"
16.1201(o)	Definitions	Compliance	Defines "Historic Site"
16.1201(p)	Definitions	Compliance	Defines "Historic Structure"
16.1201(q)	Definitions	Compliance	Defines "impervious surface" to reflect the redevelopment incentives of HB 706
16.1201(s)	Definitions	Clarification	Defines "linear project" for clarity
16.1201(t)	Definitions	Clarification	Adopts the definition of "Lot" from the Subdivision and Land Development Regulations
16.1201(y)	Definitions	Compliance	Defines Priority Funding Area per HB 706
16.1201(bb)	Definitions	Compliance	Defines "Stream Restoration Project" per HB 706
16.1201(dd)	Definitions	Compliance	Defines "Urban Canopy" . Became necessary when SB666 allowed Forest Conservation Fund to be used for forest maintenance and urban canopy goals
16.1201(ee)	Definitions	Strengthening	Defines "watershed" to mean the 12-digit watershed defined by MDE. Definition needed for sections 16.1206 and 16.1207
16.1201(ff)	Definitions	Clarification	Indicates that terms defined in the Annotated Code of Maryland are incorporated into this act unless otherwise defined herein.

Location of Change	Section Title	Reason for Change	Change
16.1202(b)(1)(i) [New (i)]	Exemptions to requirement for FCPlans	Clarification	Combines language from (i) and (ii) into new (i)
16.1202(b)(1)(iii) [Old (iii)]	Exemptions to requirement for FCPlans	Clarification	No longer applicable: no plans, with this set of qualifiers, remain in the development process
16.1202(b)(1)(ii) [New (ii)]	Exemptions to requirement for FCPlans	Clarification	Clarifies that "If new land area is added to the planned unit development, that new land area is subject to this Subtitle."
16.1202(b)(1)(iii) [New iii]	Exemptions to requirement for FCPlans	Strengthening	Clarifies that the Green Infrastructure Network qualifies as a high-priority retention location.
16.1202(b)(1)(iv)	Exemptions to requirement for FCPlans	Clarification	Separated the exemptions for ag pres subdivisions and ag activities, because they have different forest clearance exemptions.
16.1202(b)(1)(v)	Exemptions to requirement for FCPlans	Compliance	Reduces allowable disturbance from 40,000 sqft to 20,000 to comply with SB 666
16.1202(b)(1)(vi)	Exemptions to requirement for FCPlans	Clarification	Lists all instances of when resubdivisions are exempt from FCA.
16.1202(b)(1)(x)	Exemptions to requirement for FCPlans	Clarification	Clarifies that this is for highway construction using at least partial state funding. Changes location nomenclature for referencing Annotated Code of Maryland
16.1202(b)(1)(xi)	Exemptions to requirement for FCPlans	Clarification	Changes nomenclature style for referenceing Annotated Code of Maryland
16.1202(b)(1)(xii)	Exemptions to requirement for FCPlans	Compliance	Notes reduction in disturbance from 40,000 to 20,000 ft. to trigger FCA requirements per SB666
16.1202(b)(1)(xiii) - (xv)	Exemptions to requirement for FCPlans	Compliance	Compliance with HB 706
16.1202(b)(2)(i)	Exemptions requiring a Declaration of Intent	Clarification	Clarifies that this is for Residential Development

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16.1202(b)(2)(i)a	Exemptions requiring a Declaration of Intent	Compliance	Changes permissible clearing from 40,000 to 20,000, per SB 666
16.1202(b)(2)(iii) and (iv)	Exemptions requiring a Declaration of Intent	Clarification	Moves "and" at the end of 16.1202(b)(2)(iii) to the bottom of 16.1202(b)(2)(iv), because now there is a section 16.1202(b)(2)(v), added per SB 666
16.1202(b)(2)(v)	Exemptions requiring a Declaration of Intent	Compliance	Changes allowed disturbance to from 40,000 sq ft to 20,000 sq ft.
16.1202(c)(3)	Declaration of Intent	Clarification	Clarification that more than one repercussion may apply to a person failing to file, or out of compliance with, a Declaration of Intent
16.1202(c)(3)(iii)	Declaration of Intent	Clarification	Changes nomenclature style for referencing Annotated Code of Maryland
16.1203(A)	Forest Conservation Manual	Clarification	Separates the description of the "Purpose" from previous text and adds heading
16.1203(B)	Forest Conservation Manual	Clarification	Separates the description of the "Preparation and Adoption" from previous text and adds heading
16.1203 (C)	Forest Conservation Manual	Clarification	Adds a "Contents" header for the list of what is included in the Forest Conservation Manual
16.1203 (C)(5)	Forest Conservation Manual	Clarification	Clarifies that the mentioned agreements and financial security are included in Forest conservation agreements
16.1203(C)(6)	Forest Conservation Manual	Clarification	Replaces previous language with the proper name of the referenced agreements
16.1204(a)	Forest Conservation Plan	Clarification	"Shortens Howard County Forest Conservation Manual" to "Manual"
16.1204(b)	Forest Conservation Plan	Clarification	Refers to COMAR, rather than the county's Forest Conservation Manual, for the requirements for a qualified professional.
16.1204(c)	Forest Conservation Plan	Clarification	Clarifies that an approved Forest Stand Delinieation is valid for 5 years
16.1204(d)(4)(iv)	Forest Conservation Plan	Strengthening	Added to explain that the method of meeting site design requirements shall be included in the Forest Conservation Plan.
16.1204(d)(4)(v)	Forest Conservation Plan	Clarification	Adds "location and" before "methods will be followed" to remind that there are preferred locations as well as preferred methods.
16.1204(d)(4)(vi)	Forest Conservation Plan	Compliance	Reminds that a if mitigation bank credits are available, an applicant must purchase those credits rather than paying the fee-in-lieu. re: SB234

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16.1204(d)(5)	Forest Conservation Plan	Strengthening	Adds "and measures" to clarify that best management practices include processes as well as tools and hardware. Adds critical root zone protection to this.
16.1204(d)(7)	Forest Conservation Plan	Strengthening	Increases forest conservation agreement to three years to promote long term survival.
16.1204(d)(8)	Forest Conservation Plan	Clarification	Changes nomenclature from "binding forest conservation and management agreement" to "deed of forest conservation easement"
16.1204(d)(8)(i)	Forest Conservation Plan	Clarification	Clarifies that forest conservation easements are for "perpetuity"
16.1205(a)	Forest Retention Priorities	Compliance	Adds this entire section per SB 666.
16.1205(b)	Forest Retention Priorities	Strengthening	Adds that these on site retention priorities are listed in order of preference
16.1205(b)(1)	Forest Retention Priorities	Strengthening	Adds Green Infrastructure Network, and makes it the first, on the prioritized list of retention priorities
16.1205(b)(2)	Forest Retention Priorities	Clarification	Clarifies that the 100 year floodplain is defined in the Subdivision Regulations. Separated 100-year floodplain from listing with stream bank buffers, into another number on the list
16.1205(b)(3)	Forest Retention Priorities	Clarification	Simplifies location of the definition for "Stream Buffers"
16.1205(b)(4)	Forest Retention Priorities	Clarification	Simplifies location of the definition for "Forested Wetlands" and "Wetland Buffers"
16.1205(b)(5)	Forest Retention Priorities	Clarification	Clarification for consistency with the state, forest retention priorities. Incorporates definition of wildlife corridor from the FC Manual
16.1205(b)(6)	Forest Retention Priorities	Strengthening	Adds slopes of 15% or greater with a soil erodibility factor greater than 0.35. This was already a planting priority area, and has been added as priority retention area.
16.1205(b)(7)	Forest Retention Priorities	Strengthening	Adds "forest contiguous with the priority areas listed above" as a priority area.
16.1205(b)(8)	Forest Retention Priorities	Strengthening	Adds "forest contiguous with off-site forest, if the off-site forest is also protected by a Forest Conservation Easement" as a priority retention area
16.1205(b) [Old (7), (8), (10)]	Forest Retention Priorities	Clarification	These sections removed here due already being covered in other sections.

Location of Change	Section Title	Reason for Change	Change
16.1205(b) [Old (9)]	Forest Retention Priorities	Clarification	"Isolated small forest stands" are deleted as a priority retention area. They are kept as a priority planting area.
16.1205(c)(1)	Forest Retention Priorities	Clarification	Clarifies "that off-site forest must not be currently protected in perpetuity by easement or other long-term protection measures" to be counted as off-site retention
16.1205(c)(2)	Forest Retention Priorities	Clarification	Changes reference to subsection '(a)' to '(b)' since a new section (a) was added
16.1206(b)	Reforestation	Strengthening	Added reference to the new minimum width for a forest (50 ft)
16.1206( c )(1)	Reforestation	Clarification	Changes the order that reforestation thresholds are listed and clarifies that Planned Unit Developments have a 15% threshold
16.1206( c )(2)(i)	Reforestation	Strengthening	When clearing above the threshold, the reforestation ratio will be 0.5 : 1 when obligations are met within the disturbed watershed. When clearing above the threshold, the reforestation ratio will increase to 1:1 when obligations are met outside of the disturbed watershed.
16.1206( c )(2)(ii)	Reforestation	Strengthening	When clearing below the threshold, the reforestation ratio will remain at its current level ( 2:1 ) if obligations are met within the disturbed watershed. If obligations are met outside of the disturbed watershed, the ratio will increase to 3:1
16.1207(b)	Afforestation	Strengthening	Added reference to the new minimum width for a forest (50ft)
16.1207( c )(1)	Afforestation	Clarification	Changes for consistency with State Law and the Forest Con Manual
16.1207( c )(2)	Afforestation	Strengthening	Changes required afforestation ratio for cutting below the afforestation threshold from 2:1 to 3:1 when meeting obligations outside of the disturbed watershed
16.1208	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Clarification	Splits Preferred Methods section into Preferred Locations and Preferred Methods for clarity. Adds "Preferred Methods" to the section title.
16.1208a	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Strengthening	Clarifies that location priorities are listed in order of preference. Corrects "on-site" to "off-site" for consistency with intent of section

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16.1208(a)(1)	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Strengthening	Adds the Green Infrastructure Network to the top of the list of priority locations
16.1208(a)(2)	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Clarification	Simplifies reference to subdivision regulations
16.1208(a)(3)	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Clarification	Simplifies reference to subdivision regulations. Removes 25 feet so that as Subdivision Regulations change, they will be referenced for buffer size instead of a specific value cited in the current code.
16.1208(a)(7) AND (8)	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Strengthening	The order of the final two locations in this list have been switched because creating larger forest communities has more environmental value than property line or scenic road buffers
16.1208(b)	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Strengthening	Section added to separate out the preferences for locations and methods. New section "Preferred Location" indicates order of preference for locations, with different parameters than above. The section above describes site specific characteristics, whereas this section orders the preference for on-site mitigations, mitigation banks, and off site mitigation.
16.1208( c )	Reforestation and Afforestation Location Priorities, Preferred Location, and Preferred Methods	Strengthening	Separates out section on preferred methods and re-orders the preferred methods based on observations of what works better in Howard County.
16.1209	Site Design Requirements	Strengthening	New section created in order to incorporate site design requirements
16.1209(a)	Site Design Requirements	Strengthening	Describes the purpose of the section



Location of Change	Section Title	Reason for Change	Change
16.1209(b)	Site Design Requirements	Strengthening	Explains that mitigation banks, off-site compliance, and fee-in-lieu will not be considered until the following requirements are met
16.1209(b)(1)	Site Design Requirements	Strengthening	Sensitive areas and a larger stream buffer must be included in Forest Conservation Easements for nonresidential developments
16.1209(b)(2)	Site Design Requirements	Strengthening	Residential developments with more than one acre of forest obligation must meet at least 75% of their obligations on site.
16.1209(b)(3)	Site Design Requirements	Strengthening	Residential Developments in RC or RR must accommodate all forest conservation obligations within the boundaries of a receiving property before importing development density
16.1209(b)(4)	Site Design Requirements	Strengthening	Adds requirement for a 35 foot setback from side and rear lot lines when they border a Forest Conservation Easement. This requirement can be eliminated for the site if larger stock (two rows of one inch minimum caliper) is planted along the edge of the Forest Conservation Easement.
16.1210(a)	Financial security for reforestation and afforestation	Clarification	Clarifies that financial security is not required for retention obligations. Changes language from surety to security. Reflects current procedure
16.1210(a)(1)	Financial security for reforestation and afforestation	Clarification	Replaces "maintenance agreement" with "forest conservation agreement" since maintenance is part of the forest conservation agreement
16.1210(b) [Old b]	Financial security for reforestation and afforestation	Clarification	Deletes separate section for minor subdivisions with retention, because financial security is no longer required for retention.
16.1210( c ) [Old C]	Financial security for reforestation and afforestation	Clarification	Deletes section because this is no longer done.
16.1210 (b) AND (c)[New (b) AND (c)]	Financial security for reforestation and afforestation	Strengthening	Clarifies that security will be held for 3 growing seasons. Changes "maintenance agreement" to "forest conservation agreement"
16.1211(a)(1)(i)	Fee-in-lieu	Compliance	Per SB 234, fee-in-lieu can not be used if mitigation credits are available
16.1211(a)(2)	Fee-in-lieu	Compliance	Per HB 1352 the fee-in-lieu must be 20% higher outside of the PFA
16.1211(a)(3)	Fee-in-lieu	Strengthening	Reflecting current practice, that a developer of a residential subdivision may request a fee-in-lieu for no more than one acre of forest conservation obligation

Location of Change	Section Title	Reason for Change	Change
16.1212(d)(1)(iii) AND (iv)	Forest Conservation Fund	Compliance	Per SB 666, explains that the Forest Conservation Fund can be used for maintenance of existing forests, and for creating urban canopy
16.1213(b)(2)	Enforcement; Penalties	Clarification	Moves requirement for DPZ to notify a violator in writing to the end of the subsection
16.1213( c )	Enforcement; Penalties	Clarification	Changes "maintenance agreement" to "forest conservation agreement" and "conservation and management agreement" to "deed of forest conservation easement"
16.1213(e)	Enforcement; Penalties	Clarification	Changes "maintenance agreement" to "forest conservation agreement" and "conservation and management agreement" to "deed of forest conservation easement"
16.1215	Appeals	Clarification	Removes the reference to the location of a definition for "specially aggrieved"
16.1216(a)	Variances	Clarification	Provides new location for referencing procedures relating to the granting of waivers.
16.1216(b)	Variances	Strengthening	Adds definition of "unwarranted hardship" as it relates to this section
16.1216(c)	Variances	Strengthening	Explains who considers, as well as approves or denies, variances.
16.1216(d)	Variances	Strengthening	Explains what an applicant for a variance must do in pursuit of a variance.
16.12.16( e)	Variances	Strengthening	Adds that any native specimen trees removed must be replaced with a minimum of two native trees with a DBH of at least three inches.
16.1216(f)	Variances	Clarification	Clarifies communication responsibilities from the Department of Planning and Zoning to MDNR

Location of Change	Section Title	Reason for Change	Change
16.1217	Abandonment of a Forest Conservation Easement	Clarification	Adds section on Abandonment of a Forest Conservation Easement
16.1217(a)	Abandonment of a Forest Conservation Easement	Clarification	Describes authority to abandon up to 0.5 acres of FCE under certain conditions
16.1217(b)	Abandonment of a Forest Conservation Easement	Clarification	Describes notificaiton process for Planning and Zoning when a portion of an FCE is abandoned
16.1218(a)	Forest Mitigation Banking	Clarification	Adds the term "retention" to clarify that banking can be used for retention obligations, as well as reforestation and afforestation
16.1218( c )	Forest Mitigation Banking	Strengthening	Adds that forest retention mitigation banks shall be located in accordance with the retention priorities listed
16.1218(d)	Forest Mitigation Banking	Clarification	Adds the clarifier 'planted' since banks can be either retention or planted.
16.1218(e)	Forest Mitigation Banking	Strengthening	Points out that 3 growing seasons is now the standard for determining survivability guaranteed through Forest Conservation Plans. Deletes the specific aspects of what needs to be included in a forest conservation plan, since this is available in the Forest Conservation Manual.
16.1218(f)	Forest Mitigation Banking	Clarification	Added to remind that a Forest Conservation Agreement and financial security are required for planted Forest Mitigation Banks
16.1218(g)	Forest Mitigation Banking	Clarification	Adjusts nomenclature since a "Long Term, Binding, Forest Conservation and Management Agreement" is a "Deed of Forest Conservation Easement"