



## HOWARD COUNTY OFFICE OF COUNTY EXECUTIVE

3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2013 Voice/Relay

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December 14, 2021

The Honorable Dr. Opel T. Jones  
Chair, Howard County Council  
George Howard Building  
3430 Court House Drive  
Ellicott City, MD 21043

**Re: Veto – CB78-2021**

Dear Chairperson Jones:

First and foremost, I want to acknowledge our shared efforts to address a mutually identified loophole in our code that allows for the removal of priority retention trees prior to entering the development process. This loophole allows bad actors to avoid what we collectively consider to be the spirit and intent of the Forest Conservation Act, with limited and insufficient repercussions for what is broadly considered to be bad behavior.

We have placed an emphasis on preserving healthy tree cover across our County since taking office and have collaborated with the County Council to make progress on this objective. Our update to Howard County's Forest Conservation Act in 2019 was the result of a lengthy deliberative process with the Council, where the standards of our regulations were considered as we sought to bring our Act into compliance with State law and strengthen environmental regulation. Due to the constructive dialogue that we collectively engaged in throughout this process, we were able to successfully update our Act for the first time since the 1990s, passing what is now widely regarded as the strongest Forest Conservation Act in the State.

Since this summer, we have all explored the best approach to continue our work and close a loophole that allows for the removal of priority retention trees prior to entering the development process, with several pieces of legislation filed (CBs 56, 57, 64, 78, 79 and 89) that reflect differing strategies to address this issue. I asked the County Council to support CB64-2021 in September, outlining an approach to address this issue outside of the Forest Conservation Act, since the loophole that we collectively sought to close is the protection for trees prior to the application of the Act.

Last Monday, a majority of the County Council voted against CB64, opting instead to approve CB89, which aims to address this issue through a five-year "look-back" and enhanced penalty provisions within the Forest Conservation Act. While I am disappointed that CB64 failed, I am hopeful that CB89 will successfully close this loophole and end the practice of clearing priority retention trees prior to entering the development process.



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However, I have significant concerns about the passage of CB78-2021, which after an amendment that struck the vast majority of the originally proposed legislation just two full business days prior to last Monday's vote on this bill, solely reduces the on-site retention threshold for trees subject to the Forest Conservation Act from 30 inches to 24 inches. In addition to this reduction being wholly unrelated to the issue of clearing priority retention trees prior to the development process, this legislation establishes an arbitrary retention threshold that is inconsistent with both State law or that of any neighboring jurisdiction, fails to account for the desired removal of non-native and invasive trees, and creates a significant administrative burden to our staff that at no point has been publicly considered or discussed by the County Council.

By reducing the on-site retention threshold to 24 inches, CB78 establishes a new, arbitrary standard for tree retention without adequate justification or consideration for the species or health of the trees to be retained. The State standard for protected trees under the Forest Conservation Act is 30 inches diameter at breast height. We are not aware of any other jurisdiction in Maryland that applies a stricter standard and are unclear about why 24 inches would be the appropriate threshold. Without any scientific justification for this adjustment in diameter, this change is arbitrary and undermines the effort put into creating our improved Forest Conservation Act.

Additionally, CB78 provides no consideration for non-native or invasive trees, which were never intended to be preserved under the Forest Conservation Act. The Forest Conservation Manual requires that forest conservation easements be managed to minimize the presence of non-native and invasive trees because these trees jeopardize the health of forest habitats. Requiring analysis and approval for the removal of invasive trees not only runs counter to the guidance of the Forest Conservation Manual, but also creates an incentive to leave invasive species in place and plan projects around them, rather than removing them to the benefit of their natural surroundings. CB78 neglects to consider any of these factors or their impacts on the larger ecosystem.

Moreover, CB78 results in significant administrative impacts that were not contemplated by the County Council at the time of last Monday's vote, as the amount of staff time needed to inspect, review, and process forest conservation plans and requests for tree removal is anticipated to increase by at least 50% for each plan and request. Our Department of Planning and Zoning's (DPZ) Development Inspection Group (DIG) consists of two FTEs who, amongst other duties, conduct field visits for environmental review. CB78 is projected to potentially triple the number of trees that need to be field verified, creating a significant burden for staff currently responsible for field visits for environmental review, and potentially a fiscal impact due to the possible need to secure additional staff to perform this function.



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Further, by lowering the on-site retention threshold from 30 inches to 24 inches, CB78 is projected to significantly increase the number of alternative compliance requests for tree removal. This increase in alternative compliance requests will contribute to DIG positions dedicating over half their time to ensuring compliance with CB 78 and will impact the workload of reviewers across multiple departments. Such a significant shift in duties warrants a review to ensure that required work duties remain consistent with their job descriptions and may leave other duties covered by these employees unfulfilled due to the increase in time in the field or reviewing alternative compliance requests.

Based on the above stated reasons and pursuant to Charter Section 209, I wish to inform the County Council of my decision to veto CB78 as amended. I believe that CB78 is completely unrelated to objective of preventing the removal of priority retention trees prior to the development process, arbitrary and inconsistent with the intent of the Forest Conservation Act and creates a significant administrative burden that was not adequately contemplated by the County Council.

I recommend that we collectively allow CB89 sufficient time to take effect and evaluate whether it is achieving our shared goals of deterrence and forest retention at a later date. If issues persist, I look forward to working with the Council to define the problem and identify an appropriate legislative solution, as necessary.

Thank you for your attention to this matter.

All my Best,

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Calvin Ball  
Howard County Executive

Cc: Christiana Mercer Rigby, County Council Vice Chair  
Deb Jung, County Councilmember  
Liz Walsh, County Councilmember  
David Yungmann, County Councilmember  
Michelle Harrod, Council Administrator