



October 3, 2022

Written Testimony for 10/4/22 County Council public hearing on Bill 25-22, Forest Conservation – Trees¹

Submitted by

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Dear Montgomery County Council,

For 125 years, Audubon Naturalist Society (ANS) has inspired people to enjoy, learn about and protect nature. We thank the County Council for the opportunity to provide testimony on **Bill 25-22, Forest Conservation – Trees** which addresses modifications to Montgomery County’s Forest Conservation Law (FCL).

Forests and trees provide countless ecological services that help create healthy communities by reducing stormwater runoff & flooding, capturing & storing carbon, purifying our air and the water, reducing urban heat island effects, and enhancing quality of life for both people and wildlife alike. None of these natural ecological services could ever be replaced by built infrastructure. Numerous studies show the direct correlation between a healthy forests and healthy well-being for people of all ages.^{2,3,4} Furthermore, other local jurisdictions in Maryland have successfully strengthened their county-level forest conservation laws.⁵

ANS’s testimony will cover two main areas which are as follow:

- I. Montgomery County Forest Coalition’s FCL Recommendations.**
- II. Analyzing Planning Staff’s FCL Recommendations and Comparing to the MoCo Forest Coalition’s.**

I. Montgomery County Forest Coalition’s FCL Recommendations

In 2020, ANS and our local and state environmental partners formed the Montgomery County Forest Coalition.⁶ The coalition’s goals are for the county to 1) reach a “no net loss” (no more cutting down trees) and 2) a “net gain” (planting more trees) by prioritizing the protection of forest ecosystems.

¹ Bill 25-22, Forest Conservation – Trees. Available at:

<https://apps.montgomerycountymd.gov/ccllms/BillDetailsPage?RecordId=2766>

² U.S. Department of Agriculture, Forest Service. 2018. Urban nature for human health and well-being: a research summary for communicating the health benefits of urban trees and green space. FS-1096. Washington, DC. 24 p. Available at: <https://www.vibrantcitieslab.com/resources/urban-nature-for-human-health-and-well-being/>

³ Forest School: What Is It and What Are the Benefits? Xenia Spencer-Milnes. 2021. Available at: <https://www.highspeedtraining.co.uk/hub/what-is-a-forest-school/>

⁴ The Youth Guide to Forests. Food and Agriculture Organization for the United Nations. 2014. Available at: <https://www.fao.org/publications/card/en/c/0789f373-979d-4bba-a880-e8d84155aed4/>

⁵ Forest Conservation Law Memo. Montgomery County Forest Coalition. April 2021. Available at: <https://cleanstreams.anshome.org/wp-content/uploads/2022/01/Forest-Conservation-Law-Memo-April-2021-1.pdf>

⁶ Montgomery County Forest Coalition Blog. January 2022. Available at: <https://conservationblog.anshome.org/blog/moco-forest-coalition/>

While I am not testifying today on behalf of the Coalition itself, I am pleased to report that there is broad support for our recommendations: 66 individuals and 13 organizations have signed on in support of our Coalition's recommendations, and we and our supporters collectively sent 330 letters to Council and the Planning Board urging support for a much stronger FCL at the April 28th Planning Board public hearing.⁷

The Coalition has been meeting regularly with County Councilmembers and staff, Planning Staff, and Department of Environmental Protection staff to learn more and discuss introducing draft legislation to update the FCL. We have also been active participants in the Planning Department's "No Net loss of Forests initiative,"⁸ which was developed in response to Montgomery County Forest Coalition's persistent advocacy on the urgent need to protect our forests. And while we do support many of the Planning Department's recommendations, we still advocate for stronger protections that will help people, wildlife, and the environment even more in the long term by giving our county's forests and trees more protections than they have under existing laws and Planning's proposal.

ANS asks the Montgomery County Council to pass and approve the strongest possible protections for our forests by taking into consideration the following nine main recommendations developed by the Montgomery County Forest Coalition.⁹ For each recommendation, we identify whether we support the language on this issue as it exists in the draft amendment, or recommend strengthening it further:

1. Protect existing Forest Ecosystems. (Strengthen)

All remaining pre-existing Forests in MoCo should be designated & treated as priority forest in FCL. Our first priority must be to protect existing forest ecosystems.

- a. All remaining forest cover should be considered priority and may only be removed upon appropriate findings by the Planning Director or Planning Board.
- b. Certain types of forests may only be removed with a variance granted by the Planning Board or Planning Director. Types of forests and trees that would receive a stronger level of protection and require a variance to be removed include forested: Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species; Historic Site trees; Champion Trees and other exceptionally large trees; areas designated as "Priority Save Areas" in Master Plan or any Functional Plan.
- c. Forest removal subject to a variance must be replaced with forest ecosystem at a 2:1 ratio.

2. Strengthen replanting ratios to ensure no-net-loss. (Strengthen)

- a. Re-planting requirement should be strengthened from ¼ acre planted for every 1 acre removed to 2 acres forest ecosystem planted for every 1 acre removed; or

⁷ TAKE ACTION NOW! Tell Montgomery County Planning Board to save our forests! April 2022. ANS Conservation Blog. Available at: <https://conservationblog.anshome.org/blog/fcl-4-28-22-pb-hearing/>

⁸ No Net Loss of Forest initiative. Montgomery Planning Department. Available at: <https://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/no-net-loss-of-forest-initiative/>

⁹ Montgomery County Forest Coalition's Top Recommendations for updates to Montgomery County's Forest Conservation Law (FCL) one pager. September 2022. Available at: https://conservationblog.anshome.org/wp-content/uploads/2022/09/FCL-Handout_final.pdf

- b. Re-planting requirement should be strengthened from ¼ acre planted for every 1 acre removed to 1 acre forest ecosystem planted for every 1 acre removed, with no retention credit.
 - c. Require that at least 75% of the re-planting requirement be satisfied by the newly re-planted forest ecosystem.
- 3. **Strengthen Watershed Considerations. (Strengthen)**
For meeting afforestation and reforestation requirements, areas obtained outside the County or outside the sub-watershed where forest was removed for development, the requirement should be that existing forest retained through forest mitigation bank shall be at a 4:1 ratio or replanting of forest ecosystem shall be done at a 2:1 ratio.
- 4. **Strengthen Re-planting requirements to require the planting of Forest Ecosystem, not just trees. (Strengthen)**
When what's being removed is forest ecosystem, what's being replaced should be forest ecosystem as well. Reforestation or afforestation of forest ecosystem includes consideration of, payment for, and maintenance to establish the following in the re-planting: healthy soil; drainage; healthy fungi in the soil; healthy macrobiotic communities in the soil; biomass; groundcover; shrub layer; tree understory layer; tree canopy layer; diversity of different types of trees and plants.
- 5. **Forest stand delineation must be evaluated & submitted to Planning prior to submitting any application plan for development of a site. (Support)**
Adjust the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) so that an approved NRI/FSD must be submitted with certain development plans. This change will ensure that high quality forest is properly considered and preserved whenever possible.
- 6. **Eliminate certain CR exemptions. (Support)**
Exclude activities located within the Commercial Residential (CR) zone classification from qualifying for the (s)(1) and (s)(2) FCP exemptions to require forest mitigation for activities in this zone that are currently receiving the highest density but providing the least forest mitigation.
- 7. **Expanding mitigation requirements for "variance trees" to include mitigation for variance trees located within a forest. (Support)**
With the proposed amendment, removal of any variance tree, regardless of whether it is inside or outside of a forest, would require replanting at a minimum ratio of 1 caliper inch replaced for every 4 inches of trunk diameter removed (the Planning Department's current standard for removal of "variance trees" outside of forest).
- 8. **Tighten requirements around forest conservation easements so that they may not be so easily extinguished or relocated. (New addition to strengthen)**
 - a. For all existing forest cover subject to an existing forest conservation easement, the area of forest removed must be reforested at a ratio of 5 acres of forest ecosystem for every 1 acre removed.
 - b. This deterrent allows forest banks time to become mature forest ecosystems, and also keeps forest banks in the sub-watershed where they were originally intended to be planted.
- 9. **Allow landscaping to meet requirements in limited circumstances. (Support)**
Allowing landscaping, including planting trees in rights-of-way, to meet both reforestation or afforestation requirements in equity focus areas, to encourage tree planting wherever possible in areas of the county characterized by high concentrations of lower-income

households, people of color, and individuals who are not fluent in English. Outside of equity focus areas, landscaping on site could be used to meet afforestation requirements and could include landscaping in the rights-of-way.

Additional considerations for Council to support implementation:

- **Increase resources for Forest Conservation Staff.**

We understand and support the need to expand the Planning Department's Forest conservation staff to increase capacity for the department to support applicants and enable conservation of existing forest by creating additional programs, such as connecting applicants seeking off-site mitigation opportunities with property owners willing to protect forest on their properties.

- **Create tax incentives and/or subsidy programs to support forest conservation.**

There may be additional opportunities and resources to further support and encourage additional forest conservation.

The Montgomery County's Forest Coalition's recommendations would strengthen protections for our forests in our now ever-changing environment. More forests coverage would help to reduce stormwater runoff from heavy and frequent storms already happening throughout our region.¹⁰ Tree roots can help hold on to the soil, and trees can infiltrate more rain on site down into the soil instead of causing more runoff that pollutes our streams and rivers and eventually our Chesapeake Bay. Furthermore, trees are a major part of helping us adapt to climate change by reducing urban heat island effects.¹¹ On the mental health side, our trees create natural spaces for all of us to reduce our stress levels and enjoy the natural beauty that surrounds us, something that can be appreciated by all people especially during the pandemic.¹²

II. Analyzing Planning Staff's FCL Recommendations and Comparing to the MoCo Forest Coalition's

Below are some recommended improvements, suggestions, and highlights comparing both Montgomery County Forest Coalition's and the Planning Staff's FCL proposals.

Improvements needed to Planning staff's FCL recommendations.¹³

- **Overall, although Planning staff's FCL recommendations make some important improvements to the existing county's FCL, most of their recommendations are not ambitious enough to truly get the county to "no net loss" and a "net gain" of forests. If**

¹⁰ Samenow J. and Streit D. 2020. Torrential rain triggers widespread flooding in D.C. area, inundating roads, stranding motorists. Washington Post. Available at: <https://www.washingtonpost.com/weather/2020/09/10/dc-area-forecast-tropical-downpours-today-could-produce-areas-flooding/>

¹¹ Eliza Cava. 2019. Climate change makes the pavement problem worse...trees are the best medicine! ANS Conservation Blog. Available at: <http://conservationblog.anshome.org/blog/climate-change-makes-the-pavement-problem-worse-trees-are-the-best-medicine/>

¹² ANS Naturalist Quarterly Autumn 2020. Available at: <https://anshome.org/wp-content/uploads/2020/09/NQ-Autumn-2020.pdf>

¹³ Introduction of proposed 'no net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations. 4/28/22 Planning Board Public Hearing. Available at: <https://montgomeryplanningboard.org/agenda-item/april-28-2022/#:~:text=Introduction%20of%20proposed%20%E2%80%98no%20net%20loss%20of%20forest%E2%80%99%20amendments%20to%20the%20Montgomery%20County%20Forest%20Conservation%20Law%20and%20Forest%20Conservation%20%26%20Trees%20Regulations.>

the county is truly committed to taking action on climate change, we simply need to do more for our forest ecosystems. Sustainable growth is possible, by focusing growth on the main transit corridors (as is a primary goal of Thrive 2050), but let's then protect the last remaining forest in the county and replant as many trees and create as many mini-urban forests, as possible at the same time. All county residents need and should have access to the best environmental quality in their neighborhood, and that means green, clean, climate resilient neighborhoods with ample housing options for all people.¹⁴ With careful land use planning we can have both, we don't need to keep the very urgent and pressing issues of climate change and housing separate from one another.

- **Forest ecosystems are not prioritized in Planning staff's FCL proposal.** This is a major difference from the MOCO Forest Coalition's proposal, which focuses on supporting and protecting whole forest ecosystems. Planning Staffs' recommendation doesn't specify this and only suggests protecting "forest ecosystems as an alternative." The MOCO Forest Coalition's proposal would establish *all* remaining forests as priority forest. Numerous studies show the importance of protecting whole forest ecosystems for their multiple ecological benefits both now and into the future.^{15,16,17} Council should not underestimate the power forests have to mitigate the worst impacts of climate change and need to act now by implementing the strongest FCL measure possible.
- **The MOCO Forest Coalition's replanting ratios are higher than those in the Planning staff's FCL proposal.** The MoCo Forest coalition compared the two proposals, ours and the Planning Staff's proposal and we found the following differences in terms of replanting ratios and preserving priority forest areas. See ratio comparison in the chart below (and longer FLC comparison chart attached). Even in the case where Planning staff is proposing a higher replanting ratio of 2.5:1 for replanting outside watershed, there is no mechanism in place to enforce that a developer would plant outside the watershed.

Highlights to Planning Staff's FCL recommendations.¹⁸

- **Reforestation and afforestation requirements are centered and prioritized in equity focused areas.** This is an excellent recommendation and one which lines up with the county's climate action plan. The additional recommendation here would be to incorporate more community-based decision-making processes to help community members be part of the decisions of how and where they can see more trees and forests in their communities too.
- **Increasing maintenance requirements.** This is a plus as young trees can be impacted by multiple barriers in their first 5 years of life which can impact their longer livelihood. Increasing provisions around tree maintenance will help expand their lifetime. The additional recommendation in this provision would be to ensure that the county promotes the establishment and protection of forest in the long run. The

¹⁴ ANS's Thrive 2050 comments. Available at: <https://conservationblog.anshome.org/tag/thrive-2050/>

¹⁵ IUCN. 2019. Restoring Forest ecosystems provides multiple benefits to society. Available at: <https://www.iucn.org/news/europe/201905/restoring-forest-ecosystems-provides-multiple-benefits-society>

¹⁶ Earth Eclipse. 2022. Why are Forests Important? Available at: <https://earthecclipse.com/environment/importance-of-forests.html>

¹⁷ USDA. Forest Ecosystem Services. Available at: <https://www.fs.usda.gov/ccrc/topics/ecosystem-services>

¹⁸ Introduction of proposed 'no net loss of forest' amendments to the Montgomery County Forest Conservation Law and Forest Conservation & Trees Regulations. 4/28/22 Planning Board Public Hearing. Available at: <https://montgomeryplanningboard.org/agenda-item/april-28-2022/#:~:text=Introduction%20of%20proposed%20%E2%80%98no%20net%20loss%20of%20forest%E2%80%99%20amendments%20to%20the%20Montgomery%20County%20Forest%20Conservation%20Law%20and%20Forest%20Conservation%20%26%20Trees%20Regulations.>

Montgomery County Forest Coalition during Planning Staff's "No net Loss" meetings, proposed the idea of planning small urban forests using the Miyawaki method which is a method of increasing and incentivizing urban forest growth with a rich biodiversity that supports ecosystems.¹⁹ The Miyawaki urban forest method should be explored and incorporated in more ways as part of FCL updated recommendations.

On behalf of ANS and our 28,000 members and supporters, we recommend that the County Council supports and takes into consideration Montgomery County's Forest Coalitions stronger forests ecosystem recommendations. We urge the County Council to consider Montgomery County Forest Coalition's recommendations and pass the strongest possible amendments to the existing forest conservation law to protect our forests, our communities, and build a climate resilient future.

Sincerely,
Denise Guitarra
MD Conservation Advocate
Audubon Naturalist Society

¹⁹ Miyawaki method. Urban forests. Available at: <https://urban-forests.com/miyawaki-method/>

5. Forest stand delineation must be evaluated & submitted to Planning prior to submitting any application plan for development of a site.^

Adjust the timeline for approval of a Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) so that an approved NRI/FSD must be submitted with certain development plans. This change will ensure that high quality forest is properly considered and preserved whenever possible.

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• Create tax incentives and/or subsidy programs to support forest conservation.^

There may be additional opportunities and resources to further support and encourage additional forest conservation.

+ = MOCO FOREST COALITION RECOMMENDATION

^ = MOCO FOREST COALITION, PLANNING DEPARTMENT, AND PLANNING BOARD RECOMMENDATION

* = MOCO FOREST COALITION RECOMMENDS STRONGER REQUIREMENTS THAN PLANNING DEPARTMENT AND PLANNING BOARD

