

# Bill 25-22, Forest Conservation – Trees

Montgomery County Council  
October 4, 2022

## Testimony of Sylvia S Tognetti, President, Friends of Ten Mile Creek & Little Seneca Reservoir

Good Afternoon President Alborno and Members of the Council and thank you for the opportunity to testify on behalf of Friends of Ten Mile Creek & Little Seneca Reservoir in support of a stronger Forest Conservation Law (FCL). Friends of Ten Mile Creek is a member of the Montgomery County Forest Coalition and endorses the Coalition recommendations, while adding two additional ones.

These changes to the Forest Conservation Law are critical because forests provide a foundation for climate resilience, as they are the first line of defense against both extreme temperatures and rainfall events associated with climate change. In addition to reducing the urban heat island effect and mitigating floods, forests are also the first line of defense for protecting the quality of the water we drink because they reduce runoff of sediment and other pollutants, which increase the cost of water treatment. Therefore, they are also the first line of defense for critical lifeline water infrastructure systems and should be classified as critical natural infrastructure - and the lifeline of our lifeline critical infrastructure, which merits even higher priority and a greater level of protection than infrastructure that is merely critical. Lastly, they provide many other well-known co-benefits of green spaces for air quality, wildlife, physical and mental health and quality of life. And, of course, they sequester and remove carbon from the atmosphere which contributes to impacts of climate change.

The FCL amendments proposed by Planning Department staff represent a significant improvement over the current law but fall short of the recommendations of the Montgomery County Forest Coalition and it is not clear that these would fully achieve 'no net loss of forests' – as has already been done in Frederick County. We specifically ask the County Council to consider the Forest Coalition recommendations which include:

- 1. Protect existing forest ecosystems as the top priority.**
- 2. Strengthen replanting ratios to 2:1 in all scenarios and reduces the credit for onsite retention of existing forests.**
  - a. Additional FoTMC recommendation: when replanting is required, calculate tree replacement replanting at a 2:1 ratio based upon the DBH lost.
- 3. Strengthen watershed considerations**
- 4. Strengthen replanting requirements to require the planting (or regeneration) of forest ecosystems, not just trees.**
  - a. Additional FoTMC recommendation: offer the option of using a form of assisted natural regeneration practices where practicable
- 5. Require a forest stand delineation to be submitted to Planning and evaluated prior to submitting any application plan for development of a site.**

**6. Tighten requirements around forest conservation easements so they cannot be easily extinguished or relocated.**

More details, reasons for these recommendations, and differences from the proposed amendments are as follows:

**1. Protect existing forest ecosystems as the top priority.**

Forests should not be removed without approval of the Planning Director, based on strong justification. An even higher level of protection should be given to certain types of forest, which could only be removed if a Variance is granted and would need to be replaced at a ratio of 2:1. These types would include Floodplains; Stream Buffers; Forested Stream Buffers along Ephemeral Streams; Steep Slopes; Critical Habitats; Contiguous Forests; Forest Connective Corridors; Rare, Threatened, & Endangered Species habitat; Historic Site trees; Champion Trees and other exceptionally large trees; and areas designated as "Priority Save Areas" in Master Plan or any Functional Plan.

The proposed amendments maintain provisions in the existing law which only require approval of the Planning Director for removal of specific high priority forest types and only requires a variance for trees with historic value, RTE status, champion or very large trees.

We support the provision in the proposed amendments which would remove the exemption for small projects that impact forests defined as buffers.

**2. Strengthen replanting ratios to 2:1 in all scenarios and reduce the credit for onsite retention of existing forests.**

The proposed amendments would increase the replanting requirement above the conservation threshold from a ratio of  $\frac{1}{4}$ :1 to  $\frac{1}{2}$ :1. However, it maintains 2:1 below the threshold. Therefore, it appears that 'No Net Loss' may not be achieved in all projects, particularly on larger tracts. Since we don't know the mix of projects going forward, it is important to achieve no net loss in all projects.

Current law also gives 1:1 credit for on-site retention of existing forest, which also does not achieve 'No Net Loss'. The Coalition recommendation is to reduce the onsite retention credit and credit for preservation of offsite forests in priority areas to  $\frac{1}{2}$  : 1 and  $\frac{1}{3}$  : 1 in non-priority forests, and to require that at least 75% of planting requirements be met by planting. The proposed amendments would allow preservation of offsite forest when there are no opportunities for planting.

***In addition to the Coalition recommendations, Friends of Ten Mile Creek recommends*** that, to ensure no-net-loss of forests after development when replanting is required, state and local entities should calculate tree replacement replanting at a 2:1 ratio based upon the DBH lost. For example, the loss of one 24" DBH tree would be replaced with sixteen 3" DBH trees or twelve 4" DBH.

Friends of Ten Mile Creek supports the PB recommended amendment to require replanting of riparian areas but would prefer use of assisted natural regeneration practices described above.

### 3. **Strengthen watershed considerations**

If sites for planting are not available within the same watershed, the proposed amendments would require planting in a priority watershed elsewhere in the county at a 1:1 ratio above the conservation threshold, and at a 2 ½:1 ratio below the conservation threshold. Given the importance of forests for water quality in specific watersheds, the Coalition recommends a 4:1 ratio for forests replanted outside the watershed in which they are removed.

### 4. **Strengthen replanting requirements to require the planting of forest ecosystems, not just trees.**

Although difficult if not impossible to fully replace a forest ecosystem, when this is what is being removed, community members need assurances that the whole forest ecosystem is also what will be replanted to the fullest extent possible by establishing standards and best practices for replanting in the technical manual. The proposed amendments only offer this as an optional alternative to the planting protocol.

***In addition to the Coalition recommendations, Friends of Ten Mile Creek also recommends*** that the technical manual offer the option of using a form of assisted natural regeneration practices where practicable, with maintenance practices for 5 years to remove invasive species and protect small trees from deer, as would also need to be done if/when forests are replanted.

### 5. **Require forest stand delineation to be submitted to Planning and evaluated prior to submitting any application plan for development of a site.**

We support this requirement in the proposed amendments because it would enable projects to be designed to accommodate and maintain existing forests.

### 6. **Tighten requirements around forest conservation easements as a prevention so they cannot be easily extinguished or relocated.**

In order to protect existing forest conservation easements, the Coalition recommends a requirement that replacement of any forests cleared in an existing easement be replaced at a ratio of 5:1 and that this requirement could not be satisfied through preservation of existing forest. This matter is not addressed in existing law or in the proposed amendments.

Recently published high resolution (1m) data shows the loss of forests in Montgomery County from 2013 to 2018 was the second highest in the state of Maryland, amounting to over 650 acres, with an additional 1800 acres fragmented or impacted due to land use change.<sup>1</sup>

Some of the highest rates of deforestation are found in up-County watersheds from which drainage enters the Potomac River nearby and upstream from our drinking water intake, carrying stormwater runoff and sediment from land erosion and scoured stream beds, thereby

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<sup>1</sup> Based on a comparison of counties by CBF of the most recent high resolution Chesapeake Bay Program Land Use Land Cover high resolution (1m) data <https://www.chesapeakeconservancy.org/conservation-innovation-center/high-resolution-data/lulc-data-project-2022/>

increasing the cost of water treatment for everyone.<sup>2</sup> While most forests in the Ten Mile Creek watershed are designated for protection under the 2014 Ten Mile Creek Amended Master Plan, neighboring watersheds, which also drain to the Little Seneca Reservoir - our drought backup drinking water supply, are hotspots of deforestation in the County. As shown in the map/figure 1, the single highest rate of deforestation was in the Clarksburg sub-watershed - near 7% from 2009 to 2014, which is twice the rate found in other subwatersheds in the three up-county watersheds examined in this 2018 study.

The impacts of forest loss become most visible during heavy rainstorms when tributary streams load more sediment and nutrient pollution into this emergency backup Reservoir - as can be seen in the image below (Figure 2), which was posted by Montgomery Parks immediately following the July 2019 rain bomb. A 2015 study found the rate of sediment accumulation in Little Seneca is almost twice as high as in comparable drinking water reservoirs in Maryland (those found in 3rd and 5th order watersheds) - even after deducting the estimated amount that could be attributed to construction, which is when sediment loads are expected to be higher.<sup>3</sup>

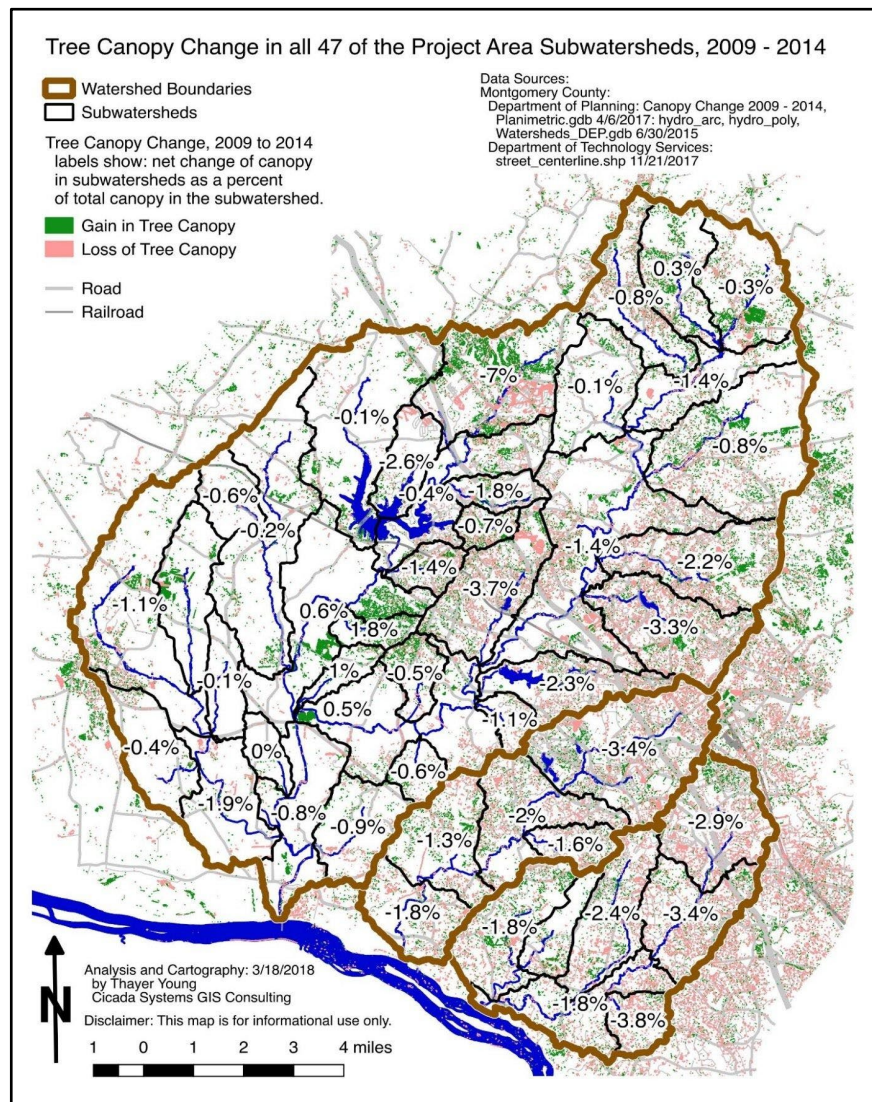


Figure 1: Deforestation rates by sub-watershed in three Upper Montgomery County watersheds, 2009-2014. Source: Cameron et al 2018.

This bill has been delayed far too long. As context, after Frederick unanimously adopted a no net loss of forests bill in 2020, and other nearby counties also strengthened their forest conservation laws, the Montgomery County Forest Coalition initiated an effort to strengthen our own Forest Conservation Law in Summer 2020 by

<sup>2</sup> Cameron, Diane, Sylvia S. Tognetti, and Thayer Young. "Protecting the Source and Maintaining Water Affordability." Prepared by The Ecologix Group for the Maryland Sierra Club, 2018.

<sup>3</sup> Smith, S.M.C., and P.R. Wilcock. 2015. "Upland Sediment Supply and Its Relation to Watershed Sediment Delivery in the Contemporary Mid-Atlantic Piedmont (U.S.A.)." *Geomorphology* 232 (March): 33-46. <https://doi.org/10.1016/j.geomorph.2014.12.036>.



asking the County Council to add a "No Net Loss of Forests" provision to a related bill. Needing more time to consider the Coalitions recommendations, the Council indicated they would address these in 2021. In the meantime, the Coalition continued to meet with members of the Council, their staff, and Planning Department staff, provided specific recommendations and proposed bill language. In response to our advocacy, the Planning Department also developed a "No Net Loss of Forests" initiative in November 2021, which led to the amendments proposed by the Planning Board, which you have before you today.

Forest protection is one of the most reliable, viable, and cost-effective methods of combating climate change, and also contributes to healthy lands, waters, and communities. Therefore, we need the strongest possible protections for our forests. In closing, we ask you again to strengthen the bill to update the Forest Conservation Law (FCL), consistent with our recommendations, in addition to those of the MoCo Forest Coalition.



*Figure 2:  
Sediment-laden  
floodwaters  
entering Little  
Seneca Reservoir  
following July 8  
2019 rain bomb.  
Source:  
Montgomery  
Parks*