

Testimony before the Montgomery County Council
Regarding Bill 26-25, Vegetation – Invasive Plants
By Jesus Zelaya, Esq., on Behalf of Ben Porto & Son Ltd. and Tri-State Stone & Building Supply Inc.

County Council Building, Rockville, Maryland, Third Floor Hearing Room
July 22, 2025 at 1:30 pm

Dear Council Members:

My name is Jesus Zelaya from The Pels Law Firm representing Ben Porto & Son Ltd. (Porto) and Tri-State Stone & Building Supply Inc. (Tri-State), which own and operate the only remaining minor quarry in Montgomery County.¹ Proposed Bill 26-25, if enacted into law, would put a significant hardship on all property owners in situations in which bamboo and other non-native vegetation have migrated onto or naturally germinated on their properties or who have legally planted and maintained bamboo and other non-native vegetation on their properties, some of which has been present for decades. The nuisance that bamboo may pose to adjacent properties, described in the Press Release from the Office of Council Member Glass, can generally only occur if the adjacent property owner is not regularly weeding and maintaining their own property. The Bill is unnecessary, contains extreme requirements, will cause undue hardship, be costly to property owners and infringes on property owners' long-time exercised rights.

Banning bamboo and invasive vegetation within 15 feet of any property barrier is extreme and costly on an ongoing basis. Only a narrow pathway or access to maintain bamboo or other non-native vegetation is all that is necessary to maintain vegetation at the property owners' property lines. Requiring 15 feet is unnecessary and would cause an ongoing undue hardship and expense for property owners.

Bamboo has served for many years as an excellent visual barrier between properties. The vast majority of the bamboo growing on Porto's property was planted by neighbors and spread naturally over time into the required setback, per County Law, on Porto's quarry property. Quarries, in particular, are required to keep a natural buffer at the property line, with the exception of access roads.

Currently, Tri-State sends employees on foot to areas where bamboo and other vegetation extends to property lines, for necessary maintenance. If quarry properties are not exempt from this legislation, or this law passes with any large distance requirement, requiring vegetation removal and maintenance along the property line, Tri-State will likely have to cut and maintain access roads through other areas of non-bamboo vegetated areas on the property to access the areas of the

¹ Porto and Tri-State are co-licensees on their State surface mining license and County quarry license. Porto owns the licensed property and Tri-State operates the quarry.

property where bamboo groves are present, in order to remove such a large amount and leave the roads to allow for regular maintenance. Further, since this Bill contemplates all invasive species, not just bamboo, even more access roads would be needed to meet the requirements of this legislation, which would require such a huge amount of area along a good portion of the perimeter of the property to be cleared and maintained. If needed to be used regularly, these access roads would increase the amount of impervious surfaces upon the land, which would then increase the Water Quality Protection Charge that would be assessed on the property. Increasing access roads will also likely annoy the surrounding Bethesda neighbors, as there will be significant earthmoving necessary to construct the required access roads where bamboo and other non-native vegetation currently exists with no present access but by foot. Current visual blockage from visual and acoustical berming will likely be reduced as a result. The changes required by this legislation, and the disruption it would cause, would be the fault of the County, not Porto and/or Tri-State. Please note that Tri-State reserves the right to construct access roads and participate in any other activity within the limits of the law at its sole discretion.

The County would be placing a large, ongoing, unnecessary logistical and financial burden on the last remaining minor quarry in the County. Adjoining property owners should be maintaining their properties from any unwanted growth of vegetation, whether native or invasive, through regular yard maintenance.

Moreover, this legislation appears to be in direct conflict with Montgomery Code Section 38-10, which requires quarries to screen its boundaries.² Tri-State complies with this law, and this Bill is requiring something different and more costly.

² Sec. 38-10. Barriers; setback.

(a) Each licensee must screen visual intrusions on any residential property created by any quarry operation in the license boundary, except access roads. The screening must be visually impenetrable to the maximum extent feasible. In reviewing the type of screening required, the Director must consider the degree of screening provided, the degree of screening achievable, the component of the quarry operation being screened, the intrusiveness of the particular activity being screened, the cost of screening, and any other relevant factor.

(b) (1) Each licensee must maintain a 75-foot deep buffer zone along the license boundary in a natural condition, undisturbed by any structure, mining, or excavation.

(2) Access or security patrol roads; directional, identification, and warning signs; security fences; and acoustical or visual screens, berms or walls must be allowed in the buffer zone.

(3) The Director may reduce the buffer depth where a 75-foot setback is not practical or undue hardship would result. Any reduction must be offset by environmental effect mitigation measures that the Director finds offer equivalent protection....

Similar hardships will be experienced by agricultural properties who do not plow and plant up to all of their property lines if they adjoin a subdivided property. And any agricultural properties that may adjoin a subdivision in the future will face significant hardship as well. This Bill, if passed, would put an enormous and ongoing unnecessary logistical and financial burden on all agricultural and quarry properties in the County that adjoin a subdivision or that may do so in the future.

The County should seriously consider not passing this legislation. If the legislation goes forward, the County should exempt agricultural and quarry properties from it. The Council also should considerably reduce the 15 foot setback requirement for all non-exempt properties to only access large enough space to maintain property lines when needed.

The Council should also require any violation to either be provided in person or by certified mail, not regular mail, and the cure period, which should be much longer than 10 days, should not begin until the violation is properly served. This would provide a more adequate time for property owners realistically to cure any violations.

This legislation is going to be overly burdensome on all property owners, as the totality of non-native vegetation contemplated in this Bill is pervasive in Montgomery County. It will most significantly burden elder residents who are trying to age in place. The legislation gives a bludgeon to any adjoining property owner who can identify invasive species and then use the government to force property owners to change their landscaping, or require landscaping if the property had previously been left to grow in a natural setting and it happens to include invasive species as defined in the legislation, even if there is no legitimate nuisance. Finally, it is an unnecessary erosion of property rights by basically providing an easement under which the County can come onto a property and force the removal of plants and vegetation, even if they are not posing an imminent danger. To achieve the Bill's purposes, the Council could simply ban all future plantings of bamboo or non-native species, require all property owners to maintain their property lines, or incentivize property owners to plant more native species.

Thank you for your consideration.