MARYLAND Association of COUNTIES

November 1, 2017

TO: Members, House Environment and Transportation Committee

FROM: Maryland Association of Counties

RE: Testimony on Forest Conservation Act and Solar Energy Facilities

The Maryland Association of Counties (MACo) offers the following testimony to the Committee on the issues related to the Maryland Forest Conservation Act (FCA) and the siting of solar energy facilities. This testimony is based on several bills submitted during the 2017 Session and ongoing discussions with interested stakeholders.

Forest Conservation Act

During the 2017 Session, the Committee considered HB 599 Forest Conservation Act – Exemption, Reforestation Rate, and Forest Conservaton Fund – Alterations. The bill proposed three alterations to the FCA:

1. increasing the minimum reforestation rate from ¼ acre for every acre removed to 1 acre for every acre removed;
2. limiting an existing FCA exemption for the clearing of public utility rights of way and land for electric generating stations to areas of 1 acre or less of forest; and
3. authorizing the Department of Natural Resources (DNR) or a local jurisdiction with a forest conservation program to increase the rates under the fee-in-lieu by 20% for each acre for which money is contributed in lieu of meeting the program's reforestation or afforestation requirements.

MACo opposed HB 599, noting the significant fiscal challenges the bill would pose for local governments, citizens, developers, and utilities. The costs for local government development and redevelopment projects will increase. The bill would also lead to higher utility costs on local governments, businesses, and citizens of the state.

Furthermore, MACo questioned the need for the bill, noting that Maryland is maintaining its tree canopy coverage established under Maryland's recently established "No Net Loss of Forest" policy.[1]

[1] The No Net Loss of Forest policy was established under HB 706 of 2013. According to DNR's Forest Action Plan 2016-2020, Maryland had a statewide tree canopy cover of almost 50%, exceeding the "No Net Loss" policy of maintaining 40% or more tree canopy cover.

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The policy, along with other reforestation and afforestation requirements found under the Chesapeake Bay Program and stormwater treatment best management practices, were implemented long after the FCA was created. MACo believes all forest conservation programs and efforts should be considered rather than narrowly looking at FCA data.

MACo remains adamantly opposed to the provisions of HB 599 for the reasons stated in this testimony. However, MACo acknowledges there are implementation problems with the FCA. One particular frustration voiced by local program managers is the lack of flexibility in spending fee-in-lieu money on reforestation or afforestation projects. Projects can be very challenging and time-consuming to assemble, and large fee-in-lieu balances can accumulate while a project is being put together.

One potential solution is the creation of a regional or statewide mitigation banking system. MACo would be willing to consider and could potentially support legislation enacting such a system. MACo is also willing to consider other alternative reforms to the FCA that do not modify the reforestation rate.

Solar Energy Facility Siting

The Committee also considered HB 863 State Agricultural and Conservation Property Interests – Solar Facilities (Right to Solar Farm) during the 2017 Session. HB 863 would have:

1. authorized the development of solar facilities on up to 3% of any property under the Maryland Agricultural Land Preservation Foundation (MALPF), the Maryland Environmental Trust (MET) and the Rural Legacy Board (RLB);
2. set an aggregate cap prohibiting further solar development once 25% of the total land in each program has solar facilities; and
3. removed certain requirements for solar that remain in place for other renewable energy sources, such as the requirement that a renewable energy project must not interfere significantly with agricultural uses of land subject to a MALPF easement.

MACo also opposed HB 863, noting that while well intentioned, the bill would upset both state and local government long-term land use planning and land preservation goals that have been in development for decades. The State and local governments work closely to identify properties or areas suitable for MALPF easements or a Rural Legacy designation (the same is true with MET properties, but to a slightly lesser extent). These decisions are based on sustaining production agriculture and the secondary industries associated with it, protecting natural and scenic lands, and preserving unique rural cultures. Once these are lost, they are permanently gone. For all of its benefits, ill-planned and rushed solar development can have the same negative impacts as other forms of development.

MACo recognizes the role utility scale solar does play in helping to meet Maryland's green energy goals and last session worked with a broad range of stakeholders, including the Public Service Commission (PSC), local governments, environmental groups, land conservation and historic preservation groups, energy developers, and public utilities to draft and pass legislation that provided

a thoughtful and reasonable approach to the siting of utility scale solar facilities.[2] MACo would oppose any proposal that would disrupt the hard work and consensus-driven approach of that legislation.

Conclusion

MACo recognizes the benefits provided by both the FCA and solar energy facilities and will remain engaged on both of these important issues. However, both issues are interwoven with a variety of equally valid land use and environmental policies and significant policy changes should only be made after careful review and consideration. Sweeping "one-size-fits-all" mandates could actually cause greater harm than good.

MACo hopes these comments are useful to the Committee. If you have any further questions, please contact MACo Legal and Policy Counsel Les Knapp (lknapp@mdcounties.org / 410.269.0043).

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[2] HB 1305 of 2017. The bill requires the PSC to:

1. as part of its review of an application for a certificate of public convenience and necessity (CPCN) for an energy generating station to give due consideration to: (i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation in which any portion of the generation station is proposed to be located; and (ii) the efforts by affected parties to resolve any issues presented by such a county or municipal corporation; and
2. provide notice of any CPCN application to the executive branch of any affected local government in addition to the local governing body, include a copy of the application to the affected local governments with the notice, and offer to provide a copy of the application to state legislators representing the affected local governments.