

Testimony of Elly Cowan
Director of Advocacy, Preservation Maryland

Before the
Senate Education, Health, and Environmental Affairs Committee
March 31, 2021

Pertaining To: HB991, Natural Resources – Forest Mitigation Banks – Qualified Preservation
Favorable with Amendments

On behalf of the staff and Board of Directors of Preservation Maryland, I thank you for the opportunity to provide testimony on the value of smart growth and preservation in Maryland. Through our Smart Growth Maryland program, Preservation Maryland advocates for a more environmentally and economically sustainable future that creates opportunities for all Marylanders through better development patterns.

REQUEST FOR AMENDMENTS FOR HOUSE BILL 991

In 2019, the General Assembly passed legislation that charged the Harry R. Hughes Center for Agro-Ecology to conduct a technical study to review and clarify data needed for educated decision-making in forest conservation, and the study is specifically charged with investigating appropriate uses of forest mitigation banks. Preservation Maryland is concerned that as written HB991 would codify significant forest mitigation policy before that study is completed. We therefore request the inclusion of sun setting amendments in HB991 to allow for the completion of the Hughes Center report so that the report, which will provide essential information for the updating of the mitigation standards in the Forest Conservation Act, can be used as a tool for comprehensive updates to the FCA during a future session of the General Assembly instead of through a piecemeal approach.

Forests are critical to the health and future of Maryland. Healthy forests provide economic, environmental, and social benefits for state residents and visitors. Those benefits run the gamut from increased property values and savings in avoidance costs, especially for stormwater management, to air and water pollution filtration and flood mitigation. Forest clearing leads to poor water quality, fragmentation and loss of wildlife habitat, reduced carbon sequestration, dirty air, increased temperatures, localized flooding, and lower property values. Investing in forests enhances quality of life and public health, while providing the future of our state with cleaner air, land, and water.

Originally passed in 1991, Maryland's Forest Conservation Act is a tool to reduce forest loss from development, and one way the FCA works to reduce the net loss of forests every year is that it requires replanting of trees to offset losses on development sites. Even despite the

mitigation and protections required through the FCA, Maryland continues to lose about 3,000 acres of forest every year, with development as the single largest driver of that loss.

HB991 would allow counties to use preservation of existing trees in a forest mitigation bank instead of new tree replanting requirements for trees removed under FCA, codifying practices that result in *greater* forest loss during development. This would allow development projects to remove up to 100% of the forest on a site with no replanting required at all. And it would do so at an unspecified ratio, which could be half or less that required by the very limited authorization in existing law. In fact, the legislation would reverse the recent opinion of the Attorney General that addressed the parameters for how counties use forest mitigation banks to correct against inappropriate use of this tool by certain counties, which has disrupted the program for counties that plant or conserve forests in the forest banking program. In September of 2020, the Attorney General's opinion clarified that developers may not leverage existing forest as an offset for cutting down trees. As envisioned by the General Assembly and as captured in State code Article – Natural Resources 18 5–1601, the opinion describes, forest mitigation banks are only intended to be areas *intentionally newly planted* with trees.

Recently, a number of counties throughout Maryland have taken steps to protect their forests with updates to forest ordinances, including Anne Arundel, Howard, and Frederick Counties and Baltimore City. Unfortunately, if enacted as written, HB 991 will encourage practices that result in greater forest loss during development without providing an effective preservation benefit. The General Assembly saw the need to take a comprehensive look at state forest conservation efforts and specifically instructed the Hughes Center to review and report on forest mitigation banking in the state. Without that information from the study, it is premature to move forward with legislation that would codify mitigation banking practices that, according the Attorney General, fall outside the intentions of the current FCA. So, unless a sunset amendment is added, HB991 should be held by the Committee until the forest mitigation study directed by the General Assembly in 2019 is complete.

We therefore respectfully request HB991 be amended to:

- 1) Require the completion of the Hughes Center Study by December 1, 2021.***
- 2) Sunset the legislation July 1, 2022. This will allow the General Assembly to revisit this topic with the results of the Study in the 2022 Session.***

Thank you very much for your consideration.