

HB0991 - Natural Resources – Forest Mitigation Banks – Qualified Preservation

Sponsored by Delegate Gilchrist

Status Senate Committee Hearing March 31, 2021

Committee Education, Health, and Environmental Affairs

UNFAVORABLE

I originally submitted comments for this bill while it was in the Environment and Transportation Committee in the House as Favorable with Amendments. With the amended bill now under consideration in the Senate, I would like to submit testimony that reiterates some comments and adds some additional concerns based on the discussion (I watched it all) and the amendments.

While I understand the reasoning behind the introduction of HB0991, **I have several comments and concerns which I hope will be considered alongside this bill.** Considering this bill as a “legislative fix” in isolation ignores closely related issues:

- 1) **Need to strengthen requirements to afforest, reforest, or preserve existing forest in the same watershed as the site/project.**
- 2) **Need to ensure more transparent, accessible, and publicly accountable forest bank information. (NOTE: Since I first raised this issue, Montgomery Planning has been working on a system to make the forest bank documentation more accessible and transparent. They have not yet released the system yet and so I cannot comment on how it functions).**
- 3) **It is reasonable to put forth a bill that will protect landowners who have invested in the program with the preservation of forests through current and planned existing forest banks (grandfathering); however any broader bill should be dependent on the findings of the statewide Hughes study which is reportedly due to be complete later this year (after being requested in 2019).**

This bill is being introduced because the October 26, 2020 Maryland Attorney General opinion concluded that the Maryland Forest Conservation Act did not allow counties to count *already existing* forest in their “forest bank” programs. The original intentions and priorities of the Act were to encourage on-site retention and on-site afforestation or reforestation (new plantings). The Act also allowed for off-site afforestation or reforestation in the same watershed or in accordance with a master plan if no on-site alternative existed.

Language in the current Montgomery County Forest Conservation Law then states:

- “Acquisition of an off-site protective easement for existing forested areas not currently protected in perpetuity is an acceptable mitigation technique instead of off-site afforestation or reforestation planting, but the forest cover protected must be 2 times the afforestation and reforestation requirements.”
- “Location requirements: Required afforestation or reforestation must occur in both the county and watershed in which the project is located, except that if it cannot be reasonably accomplished in the same county and watershed in which the project is located then the reforestation and afforestation may occur anywhere in either the county or watershed in which the project is located.” (<https://montgomeryplanning.org/wp-content/uploads/2017/10/Chapter-22A-effective->

[October-2018.pdf](https://montgomeryplanning.org/wp-content/uploads/2017/10/Chapter-22A-effective-October-2018.pdf)) <https://montgomeryplanning.org/wp-content/uploads/2017/10/Chapter-22A-effective-October-2018.pdf>

The original intention and priority of the Maryland Forest Conservation Act was not to preserve already existing forests in different watersheds far from the sites. However, up until now, Montgomery County has been allowing just that – counting credits in existing forests far away from the sites. With HB0991, Montgomery County (and presumably other counties) are proposing a legislative fix to continue to allow qualifying existing forests anywhere in the county to be counted for credits. M-NCPPC officials have stated that forest banks with existing forests are a “major” part of their forest bank programs and there would be significant implications if they are not allowed going forward. (https://montgomeryplanningboard.org/wp-content/uploads/2020/12/01_07_Forest-Conservation-Legislation-Memo-srose-edits-152021.pdf) But if this is a major component of what is being done for mitigation, then it seems it would be important to have additional information available from the Hughes study, and internally, to better frame policy.

I became aware of the forest bank system back in 2016 when I did some research regarding the mitigation for forest loss due to the Purple Line, a project which runs through my down-county neighborhood. Receipts led me to the two forest banks (one in Montgomery County and one in PG County) used for mitigation. I then visited one of the forest banks (aka looked at it from across the CSX railroad tracks up-county in Barnesville). The acres of trees which used to be in my neighborhood were now being counted with already existing trees almost an hour’s drive away. **Definitely not in the same watershed, not even close. I wondered how often that was the case?**

It turns out that Montgomery County (at least) hasn’t been tracking how many acres of forest have been mitigated through forest banks (planted or existing) within or outside of the same watershed. I can tell you from piecemeal information gathered from various development projects that many acres are not mitigated in the same watershed - and it is not easy for the public to follow the trail of mitigation. Citizens have to try to sort through the court land records or MCATLAS to try to match projects to forest banks (*and that information is only available after the transaction*). **At a minimum, there should be an easily publicly accessible centralized accounting of which forest banks are utilized by which projects. (Again, as an update, Montgomery Planning is now thankfully working on this, but nothing has been released yet).**

As part of any discussion, there must be a greater emphasis on forest bank mitigation in the same watershed. The location of mitigation is an important focus of the Act, and as the County moves forward and tries to find a legislative way to make existing forest banking work, these issues need to be part of the broader discussion.

I urge the Committee to review these issues alongside their consideration of HB0991.

Thank you,
Amanda Farber
7903 Kentucky Ave
Bethesda, MD 20814