



CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration
Environmental Education

House Bill 991

Natural Resources – Forest Mitigation Banks – Qualified Conservation

Date: March 31, 2021

To: Senate Education, Health, and Environmental
Affairs Committee

Position: **OPPOSE**

From: Robin Jessica Clark, Maryland Staff Attorney

Chesapeake Bay Foundation (CBF) **OPPOSES** HB 991 which would alter current state forest conservation law to allow preservation of existing forested land to count as mitigation for cutting down forest for development.

Environmental groups have repeatedly questioned whether the State's current forest banking allowance is being implemented appropriately.

For years, environmentalists have sought clarity as to how counties are using forest mitigation banking. There was concern that there was overly broad application: while the law stated these banks were to be intentionally planted; in practice, existing forested plots were being used as banks.

Lacking clarity, the General Assembly commissioned the *Technical Study on Changes in Forest Cover and Tree Canopy in Maryland* in the 2019 legislative session. The Study was charged specifically with identifying the capacity, location, constraints, regulations, and potential to expand the current, limited authorization for forest banks.¹ CBF could potentially support wider use of forest banks –but only with the information in hand that the General Assembly determined is needed first. The Study, however, is not yet complete.

Claiming credit for existing forest leads to much less forest.

If a county allows a developer to leverage existing forest against their project, that means that developer may clear cut trees to build, and not replant a single tree. The simple math means net forest loss every time a county allows this practice – despite the state's goal to maintain the current level of forest cover. Forest loss has negative implications for restoring the Chesapeake Bay. Trees filter water for streams and tributaries of the Bay and provide habitat to wildlife key to the functioning of the Bay ecosystem. Increasing Maryland's forested acreage is central to the State's greenhouse gas reduction and Bay restoration strategies.

¹ *Technical Study on Changes in Forest Cover and Tree Canopy in Maryland*, Chapter 405 of the Acts of the 2019 Regular Session of the General Assembly of Maryland.

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This bill seeks to legalize an illegal practice that goes against the letter and the spirit of the State's Forest Conservation Act.

The Attorney General's opinion in October of this past year brought clarity to the state's law on forest mitigation banking. While existing forest may not be used as a bank, intentionally planted forest may be used.² Forest mitigation banking is defined in the State's Forest Conservation Act as the intentional restoration or creation of forests undertaken expressly for the purpose of providing credits or afforestation or reforestation requirements.³

The Forest Conservation Act was designed to mitigate the impact of development on forests in Maryland.⁴ Counties must stop misconstruing the law in a way that leads to consistent forest loss. According to the Chesapeake Assessment Scenario Tool, the state is losing more than 1 million trees a year.⁵ The Chesapeake Bay Foundation's analysis of county annual reports shows that about two-thirds of this loss happens on development sites subject to the Forest Conservation Act.

This bill undermines incentives for farmers and private landowners to plant forest mitigation banks.

Forest mitigation banks planted on private properties provide owners with revenue, and support Maryland's forest stock for carbon capture, wildlife habitat and water quality. Under current law, and the Attorney General's opinion, forest mitigation banks are intentionally planted. This narrow and considered definition provides the basis for well-warranted remuneration to farmers and private landowners in Maryland who make efforts to establish and maintain forest on their property, thus supporting the State's forest conservation goals.

Development can proceed without this legislation, while better protecting forests.

Forest banking is intended to be one of the last of many mitigation options offered to developers. The State code recommends that other options, such as selective clearing for preservation of forest, or planting trees onsite, be explored first. Only after exhausting these options, planting offsite or purchasing offset from intentionally planted forest mitigation banks may be considered. In some counties, there are also fee-in-lieu payments. Local governments and developers retain a logical sequence of options to address the negative impacts of forest clearing during development, without HB 991.

CBF urges the Committee's UNFAVORABLE report on HB 991. For more information, please contact Robin Jessica Clark, Maryland Staff Attorney at rclark@cbf.org and 443.995.8753.

²105 Md. Op. Att'y Gen. 66 (Oct. 26, 2020).

³ Md. Code Ann., Nat. Res. § 5-1601 (o) (LexisNexis, Lexis Advance through legislation effective November 6, 2020)

⁴ 105 Md. Op. Att'y Gen. 66 at 68 (Oct. 26, 2020).

⁵ State of Maryland, *Maryland's Phase III Watershed Implementation Plan to Restore Chesapeake Bay by 2025*, 2017 at 33. "Current projections (CAST "current zoning" scenario for Maryland) estimate 3,000-acres of forest loss annually."