**OPPOSE HB 991: Natural Resources – Forest Mitigation Banks – Qualified Preservation**

Dear Chairman Pinsky and members of the Committee,

The Climate Change Working Group of Frederick County (CCWG) opposes the passage of HB 991 in its present form. We support the call for a quantitative analysis of mitigation banking and forests in Maryland, but strongly oppose the authorization of "qualified conservation" of existing forests as mitigation banks. CCWG is a group of knowledgeable citizens working to prepare Frederick County and its citizens to adapt to and mitigate the impacts of our planet's climate crisis through responsible planning, education and advocacy.

HB 991 would codify as permissible the practice of using existing forested acreage as mitigation banks for land development where on-site or off-site afforestation or reforestation are deemed not possible. While CCWG strongly supports protection of existing forest, we believe that this bill 1) discourages the planting of new forests, 2) could result ultimately in net loss of forest statewide, 3) diverts attention and funding from creating forest in the very locations and conditions that the mitigation banking law targets; and 4) responds prematurely to development pressure without waiting for the thorough forest practices analysis requested by the General Assembly in 2019.

If land developers are permitted as a matter of course to use "qualified conservation" of existing forest for mitigation credits, as long as there is available acreage approved by a local jurisdiction, the impetus to create new forest is significantly reduced. It is even possible that forest could be completely removed from a development site, and not replanted elsewhere. For example, of Frederick County's currently available banks, more than 2/3 are existing forest; credits on that acreage would not result in any new forest plantings. Recent research indicates that "reforestation is the largest natural pathway" to holding global warming below 2°C (Griscom et al.). We should encourage more tree coverage in every circumstance possible, particularly natural regeneration, which although permitted by NR §5-1607(b)(1)(iii), is not actively pursued. Globally, "letting forest regrow naturally has the potential to absorb up to 8.9 billion metric tons of carbon dioxide from the atmosphere" by 2050 (Cook-Patton, et al. 2020) and we must contribute to that in Maryland.

Existing forest banks may not be ideally sited to meet the goals of the state Forest Conservation Act (FCA), which defines the priority areas for afforestation and reforestation in NR § 5-1607(d). Placing permanent easements on existing forests protects those forests, but those forests are not necessarily in locations where the protection yields the most environmental benefits, unlike administratively defined afforestation or reforestation projects.

The Maryland Attorney General has clearly drawn the distinction between mitigation banking as described in NR §5-1610.1 and credits derived from permanently eased existing forests stating that "…although the two methods may be implemented through similar types of protective instruments, they are separate, and each has its own set of requirements" (105 Op. Att'y Gen. 66). Developers and counties have used credits from permanently eased existing forests in an apparent misinterpretation of current law, since the FCA section permitting this practice requires that the existing forest be "*not* currently protected in perpetuity" (NR§ 5-1607 (b)(2)(ii)). In Frederick County's Forest Resource Ordinance, this practice is permitted in §1-21-40(D), but again, only when "such land is not already substantially protected by the Zoning Ordinance or other long-term protective instruments in perpetuity." Clearly, existing forested acres placed under permanent easement in advance of development, for the purpose of selling mitigation credits, *are already* protected, and therefore are not permissible sources of mitigation banking credits to new development projects.

Finally, HB 991 seems to be rushing to protect an accepted (but technically legally impermissible) practice of forest conservation that has the potential to decrease the number of forested acres in the state, *before* the results of a definitive analysis of forest creation and mitigation banking are available. The General Assembly passed legislation in 2019 requesting that the Harry R. Hughes Center for Agro-Ecology conduct a technical study, including a review of mitigation banking practices and values in Maryland. That study was originally due at the end of 2019, but it has not been completed. HB 991 essentially re-mandates that study, but pushes the due date out to 2023. We believe the due date should be no later than the end of 2022, since the work was requested more than two years ago.

We oppose the practice of allowing mitigation credits on existing forest and urge that it be halted *until* the Hughes study has been completed and reviewed by the General Assembly, with specific exceptions for projects for which credits are already committed, or banks already established. Once the study has been completed, we propose that a substantial review and redrafting of the FCA be undertaken, both to resolve inconsistencies like the one that HB 991 addresses, and to further protect Maryland forests.

Obtaining mitigation credits from existing forests may be a relatively simple way to avoid the afforestation/reforestation requirements of the FCA and related local ordinances. This practice is not, however, contributing to new forest creation, which is where additional carbon-sequestration benefits lie. **The CCWG respectfully requests an UNFAVORABLE report from the Committee on HB 991.**

Thank you for this opportunity to comment.

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For the Executive Committee of the Climate Change Working Group of Frederick County

climate CHANGE WORKING GROUP OF FREDERICK COUNTY

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