

TO: Education, Health, and Environmental Affairs Committee

FROM: Jeanne Braha, Executive Director, Rock Creek Conservancy

RE: HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation

POSITION: OPPOSE

Rock Creek Conservancy respectfully OPPOSES HB 991 and requests an unfavorable report from the Education, Health, and Environmental Affairs Committee.

If enacted, HB 991 will codify practices that result in greater forest loss during development without providing an effective preservation benefit. This bill is premature and should be held by the Committee until the forest mitigation study directed by the General Assembly via SB 729 of 2019 is complete.

Maryland loses about 3,000 acres of forest every year. 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. Development is the single largest driver of forest loss in the state.

In the Rock Creek watershed, forest loss directly exacerbates the impacts of stormwater runoff. Stormwater runoff brings pollutants into streams, harming wildlife and destabilizing ecosystems. Trees are one of the most effective and least expensive ways to mitigate stormwater's effect on streams, and the extreme precipitation events that overwhelm our capacity to handle runoff are becoming only more common due to climate change. Urban streams such as Rock Creek are already vulnerable to significant impacts from stormwater runoff, and the increased rate of development we are seeing in the areas around Rock Creek already poses serious problems for maintaining the health of the stream.

Maryland's Forest Conservation Act was passed in 1991 to reduce forest loss from development. The FCA requires replanting of trees to offset a bare minimum of losses on development sites. This planting requirement leads to a smaller net loss of forest than if the law did not exist.

If adopted, HB 991 would authorize forest mitigation banks to offer credit for placing a preservation easement on trees that already exist, rather than planting new trees. 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. Reducing forest cover without conditions for replenishment, whether, ideally, in the same place or elsewhere, will be disastrous for overall environmental health.

Preservation of existing forest can be a valued part of forest conservation during development, but only with appropriate tools and guidelines in place to identify the most valuable and at-risk tracts. This Committee has identified a number of key questions that need answers before expanding any authorization for forest mitigation banking within the FCA. In 2019, SB 729 was passed by the General Assembly to direct a technical study scoped with extensive stakeholder feedback. That analysis, which is not yet complete, is to report on:

a review of forest mitigation banking in the State, including:

- 1. capacity and location of active banks;*
- 2. regulation of citing siting and creation of new banks;*

- 3. geographic limitations on the use of mitigation banks;*
- 4. the relationship between fee-in-lieu rates under the Forest Conservation Act and the market for forest mitigation banks; and*
- 5. whether expanding the use of forest mitigation banks could provide water quality improvements and other beneficial results.*

This information is critical to identifying the appropriate role of mitigation banks in maintaining forest cover across the state. Many of the stakeholders engaged on HB 991 are actively participating in this study, and we look forward to its completion. The current FCA regulatory landscape - especially after several counties have strengthened their forest conservation laws - is varied and would not be well served by HB 991's piecemeal approach to mitigation.

In summary, HB 991 would codify a major mitigation policy without information this Committee identified as critical to updating mitigation standards within the FCA. It would do so at half the rate or less that some local jurisdictions operating on a flawed interpretation of existing law are doing now. And it would make these changes without setting any parameters or priorities for the development risk, location, or ecological value of existing forest offered for credit.

Rock Creek Conservancy respectfully requests an UNFAVORABLE report from this Committee on HB 991.