

HB 991_FAV_MML IN SENATE.pdf

Uploaded by: Bailey, Angelica

Position: FAV



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

March 31, 2021

Committee: Senate Education, Health, and Environmental Affairs

Bill: _____ HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation

Position: Support

Reason for Position:

The Maryland Municipal League supports House Bill 991, which would allow afforestation or reforestation requirements under the Forest Conservation Act to be met by both creation or qualified preservation of forests.

Expanding these requirements to include maintenance, not just creation, is a reasonable and effective approach to enhancing and protecting healthy forests in Maryland. Local governments recognize the value of forests to our communities, from impacts on individual health to climate resiliency. But available land for new forest creation is difficult to find; in the meantime, existing forests are not maintained. Allowing reforestation and afforestation requirements to be met through restoration of existing forests allows local governments the flexibility they need while enabling the protection and cultivation of healthier environments.

For this reason, the Maryland Municipal League supports House Bill 991 and respectfully requests a favorable committee report.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock	Executive Director
Angelica Bailey	Director, Government Relations
Bill Jorch	Director, Research and Policy Analysis
Justin Fiore	Manager, Government Relations

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MNCPPC Position Statement - HB 991 - Environment -

Uploaded by: Borden, Debra

Position: FAV



POSITION STATEMENT

Bill: HB 991 - Natural Resources – Forest Mitigation Banks – Qualified Preservation

Position: SUPPORT W/ AMENDMENTS (PROPONENT) **Date:** February 22, 2021

Contact: Adrian R. Gardner, General Counsel

What The Bill Does: This bill will overcome the impact of a recent [Opinion of the Attorney General](#) and restore a *status quo* that – for decades until now – has given an option to use conservation of existing forests as one of several tools to achieve offsite mitigation that reduces the loss of forest cover from homeowner, developer and government construction projects.

Why We Propose/Support: The Maryland-National Capital Park and Planning Commission (“Commission”) has the local responsibility for regulating development and forest conservation approvals across almost 1,000 square miles in Montgomery and Prince George’s counties. Our agency’s role includes planning and actively enhancing forests and tree cover to protect the quality of life for 2 million people who call our bi-county region their home. Environmental stewards on our staff take this work very seriously. In that regard, the Commission administers two county-level programs that implement [Maryland’s Forest Conservation Act](#) (the “FCA”), which requires developers and other public and private builders to offset the impact of trees lost during construction or clearing according to state-wide mitigation standards. The bill is necessary to restore a proper balance between smart conservation policies and the civic lifeblood of economic development.

Disruption of Prevailing Practice

Historically, the Commission’s forest/woodland conservation programs in both counties have included an option for homeowners, developers and government agencies to satisfy their FCA requirements by using credits from offsite mitigation banks. Property owners would voluntarily create mitigation banks by encumbering existing forests to comply with strict Department of Natural Resources (“DNR”) forest conservation regulations. After a mitigation bank is established, the homeowner, developer, or government agency that must eliminate trees for a project was able to offset or replace the area they disturbed by purchasing credits from the mitigation property owner – the “banker” – who owns the encumbered forested land.

Mitigation banks established from existing forested areas never offered mitigation credits at the same rate as other banks for which forest is “created” though planting – that is, afforested or reforested. Specifically, under all of the local programs working prior to the [opinion](#), existing forest historically would yield only half (50%) of the per area credit allowed for afforestation or reforestation. This

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differential credit follows a long-standing statewide policy preference that favors onsite preservation and new plantings offsite. As amended, the bill maintains – and, for the first time, codifies – that preference for banking existing forest lands.

As required under the FCA, DNR has approved the Commission’s local programs bi-annually without serious disruption for almost 30 years. But the Attorney General’s [opinion](#) portends to upend that history by concluding as follows:

“[A]lready-forested land does not qualify... as a ‘mitigation bank’ unless the land had been intentionally afforested or reforested for the express purpose of creating a mitigation bank... Thus, the placement of a protective easement on already-existing forest, as opposed to intentionally-created-or-restored forest, would not qualify as mitigation banking under the [Forest Conservation] Act.”

Why Passing HB 991 Matters

Enacting HB 991 to restore the *status quo* is essential to avoid a bundle of very serious consequences.

- Homeowners and developers who relied on mitigation credits from existing forest banks for pending/approved construction plans are at risk of projects with void or voidable permits.
- Banking existing forest land is sometimes the best (only) practicable way to preserve really large tracts of tree cover because comparable afforestation/reforestation requires such a significant cash investment.
- Forest owners who already created tree banks to sell credits for existing forests are saddled with a now worthless encumbrance on their property – creating pressure for them to release forested land from protection to develop it.
- Some local jurisdictions will have no offsite mitigation options – including Montgomery and Prince George’s counties – for an indefinite period of time into the future.
- Without offsite options for existing forest, counties and municipalities will face extra costs for park and school projects because they already invested in banks that are disqualified by the opinion, and/or must now pay for new offsite options that are both more scarce and more expensive. The same is true for homeowners and developers in those jurisdictions.
- Eliminating the option of conserving existing forest can effectively create a preference for fees in lieu of mitigation. This collateral consequence of the [opinion](#) runs in direct contradiction to the whole purpose and spirit of 2019 SB 237 (Sen. Young), enacted as 2019 Md. Laws Ch. 602. The impetus of that bill (cross-filed as 2019 HB 272) was to disfavor fees in lieu. Because some jurisdictions will have no viable offsite options, fees in lieu will be the only option for certain projects – which presumes incorrectly that local programs allow fees in all such cases.
- Eliminating conservation of existing forest banks makes planted forests relatively more valuable and is already leading to pressure that will result in a loss of farmland and other agricultural uses which our General Plans (comprehensive plans) in each county are adopted with a serious commitment to protect. The prevailing balance should be restored.

Bi-County Impacts

One local effect of the [opinion](#) has been to trigger a precipitous depletion of any offsite mitigation options for both public or private projects. Since it was issued, like other jurisdictions across the state, our planning departments have suspended granting credits for existing forest which, as a result, has prompted a “run” on the credits from the few planted – afforested or reforested – forest mitigation banks.

Today, there are no remaining offsite credits available in Montgomery County. And the remaining acreage for credits available in Prince George’s County has been almost cut in half – from over 100 acres in October – just since the [opinion](#) was issued. Our planners have received inquiries from at least one property owner thinking about abandoning their farming uses in an agricultural area, as well as another who owns existing forests and is now considering whether to withdraw their worthless protective easements.

The impact on our schools and other public infrastructure projects also will be profound. For example, a preliminary report by the Montgomery County DOT indicates that it will need to spend another \$4 million to replace tree mitigation areas it already purchased to offset its plans for county road construction projects. The Commission is still assessing the full impact of the change on its entire capital improvements program and anticipates a need for significant budget revisions as a result.

For these reasons, the Commission urges a favorable report and passage of the bill as amended.

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HB0991-EHE_MACo_SUP.pdf

Uploaded by: Butler, Alex

Position: FAV



House Bill 991

Natural Resources – Forest Mitigation Banks – Qualified Conservation

MACo Position: **SUPPORT**

To: Education, Health, and Environmental
Affairs Committee

Date: March 31, 2021

From: Alex Butler

The Maryland Association of Counties (MACo) **SUPPORTS** HB 991. The bill is an effort to ensure that reasonable longstanding practices related to forest mitigation banking can continue in light of the recent Attorney General opinion.

Forest mitigation banks allow project developers to meet forest conservation requirements off-site by purchasing easements on established forestland, protecting them in perpetuity. In areas where replanting on-site is not feasible, forest mitigation banks account for a reasonable forest conservation practice by providing “credits” to developers. Many counties use mitigation banking to comply with the State’s Forest Conservation Act.

An October opinion from the Office of the Attorney General (OAG) indicates that credits allotted for existing forest may no longer be permissible, which would put existing practices in jeopardy and hinder both public and private development capability. Since the issuance of the opinion, mitigation banks have sold through most or all of their existing credits. HB 991 clarifies that existing forested areas are eligible for credits under forest mitigation bank programs. Current incentives for creating or restoring “new” forested areas are preserved, but already existing forest remains a useful tool for mitigation banks.

HB 991 represents a thoughtful way to clarify state law and permit longstanding forest conservation practices to continue. Accordingly, MACo urges the Committee to provide a **FAVORABLE** report for HB 991.

BaltimoreCounty_FAV_HB0991.pdf

Uploaded by: Conner, Charles

Position: FAV



JOHN A. OLSZEWSKI, JR.
County Executive

CHARLES R. CONNER III, ESQ.
Director of Government Affairs

JOEL N. BELLER
Deputy Director of Government Affairs

BILL NO.: **HB 991**

TITLE: Natural Resources – Forest Mitigation Banks – Qualified Preservation

SPONSOR: Delegate Gilchrist

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: **FAVORABLE**

DATE: March 31, 2021

Baltimore County **SUPPORTS** House Bill 991 – Natural Resources – Forest Mitigation Banks – Qualified Preservation. This legislation would authorize the use of qualified preservation in a forest mitigation bank as a standard for meeting afforestation requirements under the Forest Conservation Act.

Forest conservation is not only important for aesthetics and recreation, but it has vital impacts on species biodiversity, landscape maintenance and human health. Baltimore County has worked diligently to protect the environment by implementing bold strategies that allow for both development and conservation. However, as populations grow and areas modernize, new strategies to further forest conservation efforts are critical for the long term health of the County and the State.

By enabling the use of forest mitigation banks for meeting afforestation requirements, this legislation would aid Baltimore County in its commitment to conservation. It would allow the County to use these banks in current conservation planning to help restore deforested areas. House Bill 991 will help all jurisdictions reforest their landscapes, protect the environment and improve the lives of residents.

Accordingly, Baltimore County requests a **FAVORABLE** report on HB 991. For more information, please contact Chuck Conner, Director of Government Affairs, at cconner@baltimorecountymd.gov.

Support of HB 991 - Natural Resources – Forest Mit

Uploaded by: Ferguson, Colby

Position: FAV



Maryland Farm Bureau, Inc.

3358 Davidsonville Road • Davidsonville, MD 21035 • (410) 922-3426

March 31, 2021

To: Senate Education, Health & Environmental Affairs Committee

From: Maryland Farm Bureau, Inc.

Re: **Support of HB 991 - Natural Resources – Forest Mitigation Banks – Qualified Conservation**

On behalf of our member families, I submit this written testimony in support of HB 991, legislation that establishes the use of qualified conservation in a forest mitigation bank of all or a part of existing forests as a standard for meeting afforestation or reforestation requirements under the Forest Conservation Act. The bill defines the term "qualified preservation" as it applies to the Forest Conservation Act and alters the defined term "forest mitigation banking" as it applies to the Forest Conservation Act to include the qualified preservation of forests.

In 2020, there was an Attorney General opinion that existing stands of forests were not eligible for Forest Banking credits. The many landowners and farmers that have spent money to put their existing forested property in forest banking programs around the state. This is a significant economic impact to not allowing those properties to now not be eligible. This bill will clarify in the State Natural Resources Article that existing stands of forest are eligible for Forest Banking Credits.

MARYLAND FARM BUREAU SUPPORTS HB 991 AND ENCOURAGE A FAVORABLE REPORT

A handwritten signature in black ink, appearing to read 'Colby Ferguson'.

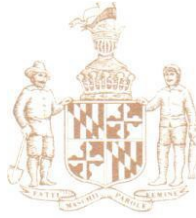
Colby Ferguson
Director of Government Relations

For more information contact Colby Ferguson at (240) 578-0396

HB991 JG Final Testimony.pdf

Uploaded by: Gilchrist, Jim

Position: FAV



The Maryland House of Delegates
ANNAPOLIS, MARYLAND 21401

March 31, 2021

HB 991
Natural Resources - Forest Mitigation Banks - Qualified Conservation

Good afternoon Chair Pinsky and members of the committee,

HB 991 concerns the Forest Conservation Act (FCA) and Mitigation Banks. The Forest Conservation Act protects forests in Maryland, and mitigation banks have played an important role in the conservation of existing forests. As it has been administered for over twenty years, the Forest Conservation Act identifies a sequence to forest preservation when a new project is considered. First is onsite preservation of forest or reforestation. Second is reforestation in the same watershed as the project. Third is the use of forest mitigation banks and last is payment in lieu. Each county submits a plan to the Department of Natural Resources on how the Forest Conservation Act is to work in their county.

Last fall the Attorney General's office was asked by Anne Arundel County for an opinion concerning the use of forest mitigation banks. The county asked if off-site forest mitigation banks that preserved existing forest were allowed under the FCA. The Office of the Attorney General responded in an opinion that a protective easement on an already existing forest would not qualify under the FCA.

This opinion has ramifications across the state for how the FCA operates. SB 234 of 2019 asked for more information concerning local fee in lieu policies while also elevating the importance of forest mitigation banks. Counties have different policies concerning mitigation banking and other aspects of the law.

House Bill 991 restores the FCA to how it has been operating for more than twenty years. It includes a 2 to 1 ratio for area in a forest mitigation bank to area needed to be mitigated. The bill was also amended in the House to restore authorization for an FCA study that was meant to be completed in 2019. That study is being led by the Harry Hughes Agroecology Center. The Center advises that the study will be complete this year, with or without the bill language.

To restore the workings of the FCA and protect the work of state and local governments I urge a favorable report for HB 991.

MBIA Testimony HB 991.pdf

Uploaded by: Graf, Lori

Position: FAV

March 31, 2021

The Honorable Paul G. Pinsky
Senate Education, Health & Environmental Affairs Committee
Miller Senate Office Building,
2 West Wing 11 Bladen St.,
Annapolis, MD, 21401

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

Dear Chairman Pinsky:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the discussion surrounding **HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation**. MBIA **SUPPORTS** the proposal.

This bill would codify the use of qualified preservation in a forest mitigation bank of all or a part of certain existing forests as a standard for meeting afforestation or reforestation requirements. MBIA respectfully supports this measure. The recent Attorney general opinion threw into doubt whether existing forest could be used as part of a mitigation bank. Allowing the use of existing forest as a mitigation bank preserves the highest value environmental site rather than new growth. Environmental data shows that older growth forest is more ecologically beneficial than new growth forest. Allowing developers to preserve older, more established and diverse ecosystems will have a greater environmental impact than forcing them to preserve new forest.

Currently forest banks that contain existing forest:

- Must be placed in a forest conservation easement that protects the forest perpetuity.
- Is often provided years before it is ever needed or sold for mitigation credit. No other mitigation option is provided ahead of time.
- Is required to be purchased at a rate that is twice as much as the mitigation required (2:1). Planting is only credited at 1:1

Disallowing existing forest to be banked will likely increase forest loss within the State by removing a key financial incentive to preserve forest. The majority of existing forests within the State is on private land. The majority of mitigation bankers are individual property owners who are incentivized to protect this forest by providing them with a supplemental source of income.

Finally, it is important to note that not all credit purchased from mitigation banks is to offset forest clearing. Highly urban sites in need of redevelopment throughout the State that do not exempt redevelopment such as Montgomery County (unless very specific criteria are met) trigger an afforestation threshold that is usually satisfied by purchasing forest banking credits. Since forest banking is set based on market rate constraining the supply will increase the cost of purchasing banking credits. If forest banking gets more expensive, then redevelopment across the State gets more expensive, therefore impacting housing affordability.

For these reasons, MBIA respectfully requests the Committee give this measure a FAVORABLE report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Education, Health & Environmental Affairs Committee

HB0991_DNR_SUP EHEA 3-31-2021.pdf

Uploaded by: Honeczy, Marian

Position: FAV



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Jeannie Haddaway-Riccio, Secretary

March 31 , 2021

The Honorable Paul G. Pinsky
Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

The Honorable Cheryl C. Kagan
Vice Chair, Education, Health and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

Re: Letter of Support – House Bill 991 – Natural Resources – Forest Mitigation Banks – Qualified Preservation

Dear Chair, Vice Chair, and Committee Members,

The Maryland Department of Natural Resources supports House Bill 991. This bill would establish the explicit ability to create and use or credit existing forest as mitigation banking to meet Forest Conservation Act mitigation requirements as has been practice for the past few decades. HB 991 also includes uncodified language that reenacts the technical study to review changes in forest cover and tree canopy in the state and include data, to the extent practical, on seven deliverables. The report, which still remains underway since its enactment in 2019, is now due on or before December 1, 2023.

Last fall, the Office of the Attorney General released an opinion that determined that only creation or planted banks meet the statute's forest mitigation banking criteria. This bill is written to address the issue raised in the opinion by putting language into statute that would explicitly enable the existing local governments' forest retention banking programs to continue. This is a highly successful forestry program that has conserved 5,365 acres in participating counties statewide and will continue to conserve large blocks of existing forest, a priority area for retention.

The department has worked closely with the bill sponsor, other proponents and environmental groups to develop the amendments you see them today. A particular priority with HB 991 is to ensure that individuals who have already begun the process for local approval as retention banks are not negatively impacted. We would also respectfully ask the committee to resist any amendments that would alter how the forest retention banking program has been operating since the late 1990s. Such proposals should be considered in separate legislation following the study. The department is also in agreement with the amendment that added the technical study as uncodified language.

For the above reasons, the department respectfully requests the committee grant HB 991 a favorable report.

Respectfully submitted,

James W. McKitrick
Director, Legislative and Constituent Services

Contact: James McKitrick, Director, Legislative and Constituent Services
JamesW.McKitrick@maryland.gov ♦ 443-510-5013

HB991 MDLCV testimony favorable only with amendmen

Uploaded by: Alexandro, Benjamin

Position: FWA



March 31st, 2021

**House Bill 991: Natural Resources – Forest Mitigation Banks –
Qualified Preservation**

Position:

Favorable only with amendments

**Maryland League of
Conservation Voters**

Lynn Heller, Board Chair
Maris St. Cyr, Vice Chair
Michael Davis, Treasurer
Hon. Virginia Clagett
Stuart Clarke
Candace Dodson-Reed
Verna Harrison
Melanie Hartwig-Davis
Ed Hatcher
Hon. Steve Lafferty
Bonnie Norman
Katharine Thomas

Kim Coble
Executive Director

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Dear Chairman Pinsky and members of the Committee,

Maryland League of Conservation Voters strongly urges amendments to HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation. Without these amendments we recommend an unfavorable report.

Importance of Forests

Every acre of forest saved sequesters enough carbon dioxide to equal the annual emissions of over 50 cars.¹ Forests also intercept harmful air particulates and absorb noxious gasses such as sulfur dioxide^{2,3} and reduce carbon dioxide. They are critical to ensuring we have clean drinking water. A survey of 27 water suppliers found that for every 10% increase in forest cover upstream of water intakes, treatment and chemical costs decreased by approximately 20%.⁴ Additionally, forests improve human health and reduce stress.⁵ Studies show that populations living near forested areas exhibit lower asthma, diabetes, and high blood pressure rates.⁶

We pay for forest loss in ecological and economic costs. In the past 45 years, the loss of forests in the Baltimore-Washington region caused a 19 percent increase in polluted runoff costing us over \$1 billion, according to the Maryland Department of Natural Resources. Chesapeake Bay taxpayers spend billions on projects to filter polluted runoff which forests do for free. As more landscape turns into shopping centers, subdivisions, and parking lots, we are forced to construct expensive man-made projects that filter polluted water running off the asphalt.

¹ Vermont Department of Forests, Parks and Recreation. November, 2016. Forest Carbon. https://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Forest%20Carbon-Nov2016.pdf

² D.J. Nowak et al. Tree and forest effects on air quality and human health in the United States Environmental Pollution 193 (2014) 119e129 127 <https://doi.org/10.1016/j.envpol.2014.05.028>

³ Nowak, David J.; Hirabayashi, Satoshi; Bodine, Allison; Hoehn, Robert. 2013. Modeled PM2.5 removal by trees in ten US cities and associated health effects. Environmental Pollution. 178: 395-402. <https://doi.org/10.1016/j.envpol.2013.03.050>. <https://www.nrs.fs.fed.us/pubs/43676>

⁴ Center for Watershed Protection. August 6, 2015. Forests and Drinking Water. <https://www.cwp.org/forests-and-drinking-water/>

⁵ Parsons, R.; Tassinary, L.G.; Ulrich, R.S.; Hebl, M.R.; Grossman-Alexander, M. 1998. The View From the Road: Implications for Stress Recovery and Immunization. Journal of Environmental Psychology 18(2).

⁶ Donovan, G. H. (2017). Including public-health benefits of trees in urban-forestry decision making. Urban Forestry & Urban Greening, 22, 120-12

Maryland's Forest Conservation Act

Currently, Maryland's Forest Conservation Act (FCA) has significant fundamental problems and loopholes that allow nearly a dozen acres of forests in the state to be lost every day. The amount of mitigation required by the FCA already results in forest loss. In many planning zones around the state, two-thirds of a fully forested parcel can be cleared before onsite or offsite mitigation is required. In the rare case where mitigation is required, often only one acre of mitigation is required for every four acres taken down.

There needs to be a comprehensive fix of the FCA. In 2019, this committee helped pass SB729 which recognized the shortcomings of the FCA and directed a technical study to review forest banking in Maryland and the role such banks play in maintaining forest cover across the state. This study which the Committee identified as a critical prerequisite to amending the FCA has not yet been completed.

HB 991

Unfortunately, HB 991 does not provide the comprehensive fix needed or even take steps forward to protect Maryland's forests. Instead, this bill would:

- obscure the original intent of the FCA and lead to faster loss of forests.
- not require counties to reforest until they cut down every bit of forest not under permanent protection, getting further and further away from a no-net-loss goal.
- not prioritize forests to be preserved based on development risk, location, or ecological value. Forest preservation can be an important component of forest conservation, but only with the appropriate policies to ensure the most valuable and at-risk tracks are targeted for preservation. Additionally, HB991 does not give priority to riparian buffers or other forests that provide benefits in water quality, flood control, climate change, etc.
- reverse the Attorney General's recent opinion which clarified the parameters for how counties use forest mitigation banks. The AG's opinion was based on the fact that as part of the state's forest mitigation program, far less planting of forests was happening than previously thought.

Necessary Amendments

Maryland LCV's position of support is conditional on two amendments:

1) Require the completion of the Hughes Center Study by December 1, 2021.

2) Sunset the entire legislation July 1, 2022. This will allow the General Assembly to revisit this topic with the results of the Study in the 2022 Session.

We understand that there are forest banks and counties concerned about the investments they have already made in conservation forest banks. These amendments will ensure that those currently with conservation forest banks will be able to move forward. These amendments will also ensure that we can have current and accurate data to better inform forest conservation policy decisions.

Summary

HB 991 would codify a major mitigation policy without current and accurate information this Committee identified as critical. The bill would make these policy changes without setting any parameters or priorities for the development risk, location, or ecological value of existing forests and would result in more forest loss.

Maryland LCV offers two amendments that will address the immediate concerns caused by the AG opinion and ensure that the original intent of the Forest Conservation Act is maintained until current and accurate data is available.

If you have any questions, please contact Ben Alexandro, Water Program Director, at balexandro@mdlcv.org.

Unless these two amendments are made, we strongly urge an UNFAVORABLE report from this Committee on HB 991.

HB991 Testimony_FWA_Preservation Maryland.pdf

Uploaded by: Cowan, Eleanor

Position: FWA

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.

Oppose HB991 in Senate EHEA (1).pdf

Uploaded by: Aiosa, Jenn

Position: UNF



HB 991 - Natural Resources – Forest Mitigation Banks – Qualified Preservation - OPPOSE

Dear Chairman Pinsky and Education, Health and Environmental Affairs Committee Members:

Blue Water Baltimore is the watershed-based nonprofit focused on improving water quality and community resilience within Baltimore City and Baltimore County, and home to the Baltimore Harbor Waterkeeper. We routinely plant hundreds of trees every year to increase our region's forest canopy, improve the health of our air and waterways, and mitigate the climate change-induced urban heat increasingly affecting residents in Baltimore City and County. Simply put, Maryland needs MORE trees, not less, and we believe HB991 will reverse decades of policy and on-the-ground work to increase our forest resources in Maryland. As such, we respectfully request an **UNFAVORABLE report on HB991**.

The benefits of trees and forests are well understood. Trees absorb pollution from the water and air, reduce summer heat and stormwater flooding in our communities, and capture CO₂ and other greenhouse gases, reducing the impacts of climate change and development activities. **The Maryland Senate just passed the Climate Solutions Now Act, which included public funding for the planting of 5 Million trees over the next 10 years in recognition that trees are critical to reducing the impacts of climate change on our neighborhoods, air, and water.** Every effort must be made to both protect existing healthy trees AND accelerate the planting and replanting of more trees if we hope to meet our Bay Restoration goals for clean water, our existing State policy of “No Net Loss” of forests or meaningfully reduce climate impacts in our most populous jurisdictions.

For decades, mitigation of forests and other natural resources lost to development and land clearing has always included a specific sequence: first avoiding impacts to the resource, followed by minimization of planned impacts, and ultimately mitigation of lost resources. Mitigation has concentrated on replacing the lost resource or paying into a fund that aggregates small payments to replace larger areas of impacted resources. The rise of “mitigation banks” supported the science showing greater ecological benefits could be realized from larger, perpetually protected restored areas.

HB991 changes the very definition of a forest mitigation bank. Instead of defining “mitigation” as planting or replanting new trees, HB 991 allows for after-the-fact preservation of existing trees to meet the definition of “mitigation banking”. Functionally, this bill will result in clear-cutting of forests and mature trees for development, without ANY requirement for planting more trees elsewhere. **State and local governments will have to drastically increase their expenditure of public funds for tree plantings nearly everywhere to keep pace with climate change, Chesapeake Bay Restoration goals, and the State's policy of No Net Loss.** This is short-sighted and unwarranted.

For these reasons, Blue Water Baltimore, on behalf of our thousands of members and supporters, respectfully requests an UNFAVORABLE report on HB 991. Thank you.

HB0991 senate final.PDF

Uploaded by: allen, gary

Position: UNF



March 29, 2021

Members of the Senate Education, Health and Environmental Affairs
committee

HB 0991 oppose Mitigation Banking Qualified Preservation

Mr. Chairman, and Members:

HB991 is a deeply flawed Bill. It proports to qualify preserved land for lost forest resources. Yet in reality it adds nothing to existing forest cover. It legitimizes a practice which has been used as loophole in FAC implementation. This would codify practices that result in greater forest loss during development without providing guidelines to ensure an effective preservation benefit. At the very least preserved forest cover should be at least double that taken by a proposed development. As drafted, it should NOT BE SUPPORTED. There are no standards ensuring that the forest offered for preservation has high ecological value or is at risk of being lost to future development.

This legislation would reverse the recent opinion of the Attorney General that clarified the parameters for how counties use forest mitigation banks. 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 of intentionally newly planted with trees. The bill does not even match current practice in those jurisdictions operating under a flawed interpretation of the law. These jurisdictions are requiring at least two acres preserved for each acre cut – and in some cases, more (Frederick and Charles require from 2.5:1 to 4:1 if using preservation as mitigation). The Maryland Forestry Foundation strongly opposes this legislation and urges an unfavorable Report. Local governments can and should do better than the standard set here.

Respectfully,

Gary G. Allen
President, Maryland Forestry Foundation
Marylandforestryfoundation.org

GARY G. ALLEN
President

ERIC SPRAGUE
Vice President for
Development

SANDRA SPARKS
Vice President for
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HB991_MCA_UNFAV_Bailey.pdf

Uploaded by: Bailey, Joyce

Position: UNF

Committee: Education, Health & Environmental Affairs
Testimony on: HB991: “Natural Resources--Forest Mitigation Banks--Qualified Preservation”
Organization: Montgomery Countryside Alliance
Person Submitting: Joyce Bailey, Climate Change Liaison
Position: Unfavorable
Hearing Date: March 31, 2021

Dear Mr. Chairman and Committee Members,

Montgomery Countryside Alliance strongly opposes HB 991. The Forest Conservation Act (FCA) has significant fundamental problems and loopholes that allow nearly a dozen acres of forests to be lost every day in the state. This bill further undercuts the FCA by protecting fewer forests, and leads to faster loss of forests. Additionally, this legislation would reverse the recent opinion of the Attorney General (AG) that clarified the parameters for how counties use forest mitigation banks. In effect, this bill would save only half (or fewer) of the forests that were being preserved last year. It also undercuts one of the major benefits of the Climate Solutions Now bill which requires the planting of 5 million trees.

The amount of mitigation required by the FCA already results in forest loss. In many planning zones, two-thirds of a fully forested parcel can be cleared before onsite or offsite mitigation is required. In the rare case where mitigation is required, only one acre of mitigation is needed for every four acres taken down. The current mitigation requirements in Maryland result in forest loss, and HB 991 would result in more loss.

Maryland needs as many forests as possible, a fact recognized by this Committee when it passed the Climate Solutions Now bill requiring the planting of 5 million trees. Forests clean our air as they intercept harmful air particulates and absorb noxious gases, such as sulfur dioxide. Forests sequester carbon dioxide. Every acre of forest saved sequesters enough carbon dioxide to equal the annual emissions of over 50 cars. Forests create clean drinking water. A survey of 27 water suppliers found that for every 10% increase in forest cover upstream of water intakes, treatment and chemical costs decreased by approximately 20%. Forests improve human health. Views of nature reduce stress. Studies show that populations living near forested areas exhibit lower asthma, diabetes, and high blood pressure rates. We pay for forest loss in ecological and economic costs. In the past 45 years, the loss of forests in the Baltimore-Washington region caused a 19 percent increase in polluted runoff costing us over \$1 billion, according to the Maryland Department of Natural Resources. Meanwhile, Bay taxpayers spend billions on projects to filter polluted runoff, which forests do for free. As more landscapes turn into shopping centers, subdivisions, and parking lots, we are forced to construct expensive man-made projects that divert and filter polluted water running off the asphalt. Many local governments are financially burdened by this work.

For these reasons, we strongly urge an UNFAVORABLE report from this Committee on HB 991.

HB0991-UNFAV-DTMG-3-31-21.pdf

Uploaded by: Bartlett, Olivia

Position: UNF



Olivia Bartlett, Co-Lead, DoTheMostGood Maryland Team

Committee: Education, Health & Environmental Affairs

Testimony on: HB0991 - Natural Resources--Forest Mitigation Banks--Qualified Preservation

Position: UNFAVORABLE

Hearing Date: March 31, 2021

Bill Contact: Delegate Jim Gilchrist

DoTheMostGood (DTMG) is a progressive grass-roots organization with more than 2500 members who live in a wide range of communities in Montgomery and Frederick Counties, from Bethesda near the DC line north to Frederick and from Poolesville east to Silver Spring and Olney. DTMG supports legislation and activities that keep all the members of our communities healthy and safe in a clean environment and that address equity for all residents in our communities. DTMG strongly **opposes** HB0991 because it will undercut the protections in the Forest Conservation Act (FCA) and will protect fewer forests and lead to faster loss of forests in Maryland. This will be bad for the health of all Maryland residents and significantly hamper our ability to fight climate change.

Maryland needs as many forests as possible, a fact recognized by this Committee when it passed the Climate Solutions Now bill (SB0414) requiring the planting of 5 million new native trees by 2030! We pay for forest loss in ecological, economic, and health costs.

Forests fight climate change. HB0991 will undercut one of the major benefits of the Climate Solutions Now bill which requires planting 5 million trees. Every acre of forest saved sequesters enough carbon dioxide to equal the annual emissions of over 50 cars.

Forests also create clean drinking water. A survey of 27 water suppliers found that for every 10% increase in forest cover upstream of water intakes, treatment and chemical costs decreased by approximately 20%.

Forests improve human health in several ways: Forests clean our air. In addition to absorbing the greenhouse gas carbon dioxide, forests absorb harmful air particulates as well as noxious gases, such as sulfur dioxide. Views of nature and “forest bathing” – just walking in the forest – have been shown to reduce stress. Studies show that populations living near forested areas also have lower rates of asthma, diabetes, and high blood pressure.

Loss of forests also cost taxpayer money. In the past 45 years, the loss of forests in the Baltimore-Washington region alone caused a 19% increase in polluted runoff costing us over \$1 billion, according to the Maryland Department of Natural Resources. Meanwhile, Bay

taxpayers spend billions on projects to filter polluted runoff, which forests do for free. As more landscapes turn into shopping centers, subdivisions, and parking lots, we are forced to construct expensive man-made projects that divert and filter polluted water running off the asphalt. Many local governments are financially burdened by this work.

The amount of mitigation required by the FCA already results in forest loss. The FCA has significant loopholes that allow nearly a dozen acres of forest to be lost every day in Maryland. In many planning zones, two-thirds of a fully forested parcel can be cleared before onsite or offsite mitigation is required. In the rare case where mitigation is required, only one acre of mitigation is needed for every four acres taken down.

HB0991 will further erode protection of our forests and goes against the recent opinion of the Maryland Attorney General that clarified the parameters for how counties use forest mitigation banks. In effect, HB0991 would save only half (or fewer) of the forests that were being preserved last year.

The current mitigation requirements in Maryland already result in forest loss, and HB0991 would result in even more loss. This is harmful to our health, our wallets and our climate. **For these reasons, DTMG strongly opposes HB0991 and urges an UNFAVORABLE report from this Committee.**

Respectfully submitted,

Olivia Bartlett
Co-lead, DoTheMostGood Maryland Team
olviabartlett@verizon.net
240-751-5599

HB991_Senate_Oppose_Potomac Conservancy_Testimony.

Uploaded by: Belin, Hedrick

Position: UNF

TO: Education, Health, and Environmental Affairs Committee

FROM: Hedrick Belin, President, Potomac Conservancy

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

POSITION: OPPOSE

Potomac Conservancy respectfully OPPOSES HB 991 as written, 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. Loss of forest leads to negative public health impacts for Maryland families - poor water quality, reduced carbon sequestration, dirty air, increased temperatures, localized flooding, and lower property values. Development is the single largest driver of forest loss in our state.

Strong forest protection laws are critical to protecting public health for Maryland families. Healthy forests provide our communities with clean water, clean air, wildlife habitat, and natural spaces where we can go for our wellbeing. Passage of HB 991 would see those benefits to the *public* destroyed – now and for future generations -- for short-term *private* gains.

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 than half required by the very limited authorization in existing law.

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.

Gathering this information from the technical study 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 in the past two years- 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. HB 991 if passed as currently written would provide only short-term private gains, through robbing the public of the clean water, clean air, and other health benefits forests provide. We must not let special interests skirt legal requirements to limit tree removal and replace loss of trees with plantings, and ask you as legislators elected by the public, to protect public health over private profits.

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

MD HB991 Testimony.pdf

Uploaded by: Boland, John

Position: UNF

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.

2021.03.29 Anacostia Watershed Society_ HB991 Fore

Uploaded by: Castelli, Erin

Position: UNF



ANACOSTIA WATERSHED SOCIETY

March 29, 2021

In OPPOSITION to HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation

Erin B. Castelli
Interim President/CEO

Dear Members of the Education, Health, and Environmental Affairs Committee:

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Honorary Member
Robert E. Boone

I am writing on behalf of the Anacostia Watershed Society to urge you to OPPOSE HB 991, the Natural Resources – Forest Mitigation Banks – Qualified Preservation bill.

The Anacostia Watershed Society is a 501(c)(3) organization founded in 1989 to restore and protect the Anacostia River and its watershed communities. Reforestation is among our priorities, recognizing the value of a robust tree cover in our increasingly developed metro area. We are losing what fragments of forests remain, and healthy urban communities cannot sustain a net loss of trees.

Two years ago, the Maryland General Assembly directed a forest mitigation study to assess and clarify forest mitigation banking practices. This study is ongoing. HB 991 is therefore a premature bill, and should be held by the Committee until the requested forest mitigation study has been completed and reviewed.

Maryland is losing some 3,000 acres of forest every year, and development is the single largest driver of forest loss in our state. Maryland's Forest Conservation Act, passed in 1991, currently requires replanting of trees to offset losses on development sites. If adopted, HB 991 would weaken existing tree replacement requirements by enabling development projects to potentially remove up to 100% of the forest on a site with no replanting required at all. This is unacceptable.

Forest conservation can only be realized with appropriate tools and guidelines in place to truly mitigate losses. It is critical that the General Assembly not attempt to address forest mitigation practices piecemeal, but rather wait to make well-informed decisions based on the information in the forest mitigation study the General Assembly itself requested in 2019 via SB 729.

The Anacostia Watershed Society respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Thank you for your consideration.

Erin Borgeson Castelli
Interim President/CEO

OPPOSE HB0991 Jean Cavanaugh testimony Senate.pdf

Uploaded by: Cavanaugh, Jean

Position: UNF

OPPOSE HB0991

Title

Natural Resources – Forest Mitigation Banks – Qualified Preservation

Sponsored by

Delegate [Gilchrist](#)

Status

In the Senate Ed, Health & Env Affairs - Hearing 3/31 at 1:00 p.m.

Synopsis

Establishing the use of qualified preservation in a forest mitigation bank of all or a part of certain existing forests as a standard for meeting afforestation or reforestation requirements under the Forest Conservation Act; defining the term "qualified preservation" as it applies to the Forest Conservation Act; altering the defined term "forest mitigation banking" as it applies to the Forest Conservation Act to include the qualified preservation of forests for certain purposes; etc.

Senators,

I **strongly oppose HB0991**. Here are my reasons:

- 1) We are **rapidly losing valuable mature tree canopy in urbanizing and gentrifying areas**, especially in Montgomery County where I live. Mature tree canopy is essential to fight climate change, avoid creation of heat islands in urbanizing areas, manage stormwater, provide mental health and crime reduction benefits, and support local food production.
- 2) Montgomery County is one of the counties that **erroneously/illegally (according to the AG decision of November 2020) allowed developers and property owners** to avoid local preservation or replacement of trees destroyed by purchasing existing forest upcounty.
- 3) Populations in areas where valuable tree canopy was lost **do not benefit** from upcounty existing forest preservation on private land.
- 4) HB0991 was **written by the building industry** (Maryland Building Industry Association) without collaboration or coordination with the environmental community.
- 5) HB0991 allows local jurisdictions to **take the lazy way out of resolving their perceived conflict** between development and essential natural services like trees, without even trying to adjust or amend local codes and requirements in order to accommodate mature trees so fewer would be removed. In fact, local jurisdictions seem to be looking for ways to exempt certain actions from FCA requirements at all (see recent efforts by Montgomery County to exempt local highway construction from FCA compliance).

- 6) HB0991 **counters and negates the determination of the State Attorney General** that the intent of the Forest Conservation Act is to maintain forest canopy in our communities across the state.

Elected officials, regulators, the building industry, environmentalists, and property owners **should be working together to figure out how to strengthen both the state FCA and local legislation** with the goals of preserving mature tree canopy, replanting trees in the same community and subwatershed where they were lost, and co-existing trees with stormwater management to improve conditions of both. All tree removal actions and remedies by private and public actors should be **accounted for and transparently accessible to citizens** through an easy to access database and printed records upon request. Our trees are a valuable community resource and we need to work together to preserve and increase our native tree canopy.

Thank you for considering my testimony.

Jean Cavanaugh
9207 Worth Ave
Silver Spring, MD 20901

HB 991_Chesapeake Bay Foundation_OPPOSE_EHE_RobinC

Uploaded by: Clark, Robin Jessica

Position: UNF



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.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

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."

HB 991 FHRP Letter of Opposition 3_31_2021.pdf

Uploaded by: Cleary, Kevin

Position: UNF



P.O. Box 16167
Baltimore, MD 21218

Email: info@friendsofherringrun.org
Website: friendsofherringrun.org

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PATRICIA DOWD

TO: Education, Health, and Environmental Affairs Committee, Maryland House of Delegates

FROM: Scott Johnson, President & Kevin Cleary, Vice-President, Board of Friends of Herring Run Parks, Inc.

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

POSITION: OPPOSE

The Friends of Herring Run Parks, Inc. 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.

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.

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.

The Friends of Herring Run Parks, Inc. respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Testimony-HB 991- Oppose-UULMMD- Phil Webster.pdf

Uploaded by: Egan, Ashley

Position: UNF



Unitarian Universalist Legislative Ministry of Maryland

--OPPOSE--

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

TO: Chairman Pinsky and members of the Education, Health and Environment Committee,

FROM: Phil Webster, Climate Change Task Force Leader,
Unitarian Universalist Legislative Ministry of Maryland.

DATE: March 31, 2021

The Unitarian Universalist Legislative Ministry of Maryland strongly opposes HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation.

As Unitarian Universalists, we recognize and respect the interdependence of all existence. We are called to seek solutions to both environmental degradation in affirmation of our Seventh Principle, and justice and equity for marginalized members of our society in affirmation of our Second Principle.

The Forest Conservation Act (FCA) has significant fundamental problems and loopholes that allow nearly a dozen acres of forests to be lost every day in the state. There needs to be a comprehensive fix of the FCA. Unfortunately, this bill does not provide a comprehensive fix, nor does it create a “status quo” of forest conservation as some proponents had intended. Instead, this bill would obscure the original intent of the FCA, protect fewer forests, and lead to faster loss of forests. Additionally, this legislation would reverse the recent opinion of the Attorney General (AG) that clarified the parameters for how counties use forest mitigation banks. In effect, this bill would save half (or fewer) of the forests than were being preserved last year.

The amount of mitigation required by the FCA already results in forest loss. In many planning zones, two-thirds of a fully forested parcel can be cleared before onsite or offsite mitigation is required. In the rare case where mitigation is required, only one acre of mitigation is needed for every four acres taken down. The current mitigation requirements in Maryland result in forest loss, and HB 991 would result in more loss.

What is needed is a comprehensive overhaul and improvement of the Forest Conservation Act. We can learn a lot from places like Frederick County that unanimously passed bipartisan legislation last summer to create no net loss of forests in the county.

The biggest failure of HB 991 is that the same ratio or even less that would be applied to preserving a forest is applied to reforestation/ afforestation. This approach is inconsistent with the AG opinion and in fact, allows a ratio of 1:1 which provides even less protection

than the ratios counties were using prior to the AG opinion. For example, Frederick County was at 2.5:1 ratio and Charles was around 4:1 ratio outside the watershed.

HB 991 could lead to some counties never replanting forests. Given that it is usually cheaper to preserve unthreatened land than it is to reforest land, under the state minimum most developers would simply preserve forest. Counties would not need to reforest until they cut down every bit of forest not under permanent protection, getting further and further away from a no-net-loss goal. When counties like Frederick County were preserving multiple acres for each one they had to replant, it allowed for reforestation banks to compete. Afforestation/reforestation banks could be pushed out of business under HB 991. Forest preservation can be an important component of forest conservation, but only with the appropriate policies to ensure the most valuable and at-risk tracks are targeted. There is no prioritization of preservation under HB 991. Additionally, HB 991 does not give priority to riparian buffers or other forests that provide benefits in water quality, flood control, climate change, etc. HB 991 gives no priority based on development risk, location, or ecological value.

HB 991 is premature. In 2019, this committee helped pass SB 729 which directed a technical study to review forest banking in Maryland and the role such banks play in maintaining forest cover across the state. Results from this study which the Committee identified as a critical prerequisite to amending the FCA has not been completed yet. Maryland needs as many forests as possible. Forests clean our air as they intercept harmful air particulates and absorb noxious gasses such as sulfur dioxide.

Forests reduce carbon dioxide. Every acre of forest saved sequesters enough carbon dioxide to equal the annual emissions of over 50 cars. Forests create clean drinking water. A survey of 27 water suppliers found that for every 10% increase in forest cover upstream of water intakes, treatment and chemical costs decreased by approximately 20%. Forests improve human health. Views of nature reduce stress. Studies show that populations living near forested areas exhibit lower asthma, diabetes, and high blood pressure rates. We pay for forest loss in ecological and economic costs. In the past 45 years, the loss of forests in the Baltimore-Washington region caused a 19 percent increase in polluted runoff costing us over \$1 billion, according to the Maryland Department of Natural Resources. Meanwhile, Bay taxpayers spend billions on projects to filter polluted runoff which forests do for free. As more landscape turns into shopping centers, subdivisions, and parking lots, we are forced to construct expensive man-made projects that filter polluted water running off the asphalt. Many local governments are financially burdened by this work.

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 make these changes without setting any parameters or priorities for the development risk, location, or ecological value of existing forest offered for credit. Most importantly it would cut the amount of forests needed to be preserved in half or more. We would lose more forests under HB 991.

We strongly urge an UNFAVORABLE report from this Committee on HB 991

HB0991 -Testimony-FARBER-UNFAVORABLE.pdf

Uploaded by: Farber, Amanda

Position: UNF

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

HB991_Forest Mitigation Banks_HoCoCA_UNFAV.pdf

Uploaded by: Feighner, Liz

Position: UNF



HoCoClimateAction.org
Howard County, Maryland

Testimony in OPPOSITION of HB991 – Forest Mitigation Banks - Qualified Conservation

Hearing Date: March 31, 2021

Bill Sponsor: Delegate Gilchrist

Committee: Education, Health, and Environmental Affairs

Submitting: Howard County Climate Action

Position: Opposition

[HoCo Climate Action](#) -- a [350.org](#) local chapter and a grassroots organization representing more than 1,450 subscribers, and a member of the Howard County Climate Collaboration -- opposes HB991, Forest Mitigation Banks - Qualified Conservation.

We have been educating ourselves and others in Howard County about the climate crisis for over 13 years. We are very concerned this bill will result in loss of more forests, which are vital for absorbing carbon and helping to avert our climate crisis. Maryland loses about 3,000 acres of forest every year, harming our health and environment. On average, one acre of new forest can sequester about 2.5 tons of carbon annually.

This legislation would allow counties to use preservation of existing trees in a forest mitigation bank to get around the replanting requirements for trees razed for development under the Forest Conservation Act. This runs contrary to the attorney general's opinion in October 2020. The attorney general's office concluded that the preservation of existing trees would not qualify as mitigation banking under the Forest Conservation Act. This legislation also undermines a major provision of the Climate Solutions Now Act, which requires the planting of 5 million trees.

In 2019, SB 729 was passed by the General Assembly to direct a technical study for forest mitigation banking. That analysis, which has not yet been completed, is critical in identifying the appropriate definition of mitigation banks. The study needs to be completed before lawmakers consider this or similar bills.

While a comprehensive overhaul and improvement of the Forest Conservation Act is needed to fix its problems and loopholes, this bill is flawed. It will only hasten the loss of forests to development in Maryland. We urge you to wait for the comprehensive study mandated in SB 729 before updating the Forest Conservation Act.

For these reasons, we strongly urge an UNFAVORABLE report on HB 991.

HoCo Climate Action

HoCoClimateAction@gmail.com -

Submitted by Liz Feighner, Steering and Advocacy Committee, Columbia MD

www.HoCoClimateAction.org

HB 991_CMBA_OPPOSE .pdf

Uploaded by: Goembel, Luke

Position: UNF



TO: Education, Health, and Environmental Affairs Committee

FROM: Central Maryland Beekeepers Association

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

POSITION: OPPOSE

Central Maryland Beekeepers Association (CMBA) respectfully OPPOSES HB 991 and requests an unfavorable report from the Education, Health, and Environmental Affairs Committee.

Maryland beekeepers depend on a varied selection of well established, native species such as black locust, tulip poplar, catalpa, dogwood, redbud, and others that are essential to the health of pollinators and are necessary for honey production. Many of the trees that are essential for our bees and our livelihood are considered “junk trees” by arborists, landscapers, and nurseries. For an illustrative, but vivid, example of what beekeepers experience when old, native growth is removed and replaced without regard for bees, consider the following from one of our members:

When land near Herring Run Park in Baltimore County was denuded of its established, native species about five years ago the beekeeper experienced a dramatic reduction in honey yields and a dramatic reduction in hive survival. The trees removed included numerous black locust trees, perhaps the single most prolific blossom source for honeybees in Maryland. The ridiculously small non-nectar producing saplings planted in their place mostly died and have yet to be replaced with living trees. How many decades would it take a black locust sapling to grow into the nectar source that was removed? 20 years? 40 years? More importantly, as best the beekeeper could tell, the saplings (before they died, and have yet to be replaced) looked like maple trees - a very poor substitute for the black locust that were destroyed. A vital, lush nectar source for this beekeeper has been replaced with a food-desert for his now barely surviving colonies. It is important to realize that this single example is repeated many many times as Maryland developers remove essential, established, native, forage necessary for the survival of bees and the survival of beekeeping in Maryland.

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.

CMBA urges you to accept additional amendments on HB991 - Natural Resources - Forest Mitigation Banks - Qualified Preservation, sponsored by Delegate Gilchrist. We are favorable to this bill *only* if the following amendments are accepted:

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.*

If the bill is passed out of Committee without these amendments, our posture will be in opposition to this bill.

Central Maryland Beekeepers Association respectfully requests an UNFAVORABLE report from this Committee on HB 991.

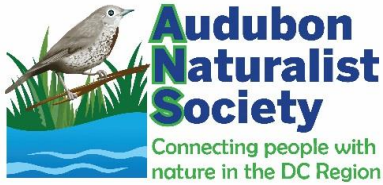
Luke Goembel, Ph.D.
Vice President, Central Maryland Beekeepers Association

443-465-3863, vp@centralmarylandbees.org, CMBA is a 501©(3) Educational Tax Exempt Organization.

HB991_ANS_UNFAVORABLE.pdf

Uploaded by: Guitarra, Denisse

Position: UNF



March 29, 2021

Written Testimony for [HB991](#) - Natural Resources - Forest Mitigation Banks - Qualified Conservation

Position: UNFAVORABLE

Submitted by Denisse Guitarra

Maryland Conservation Advocate, Audubon Naturalist Society (ANS)

Dear Senate Education, Health and Environmental Committee,

For 124 years, Audubon Naturalist Society has inspired people to enjoy, learn about and protect nature. We thank the Senate Education, Health and Environmental Committee for the opportunity to provide testimony for HB991. **ANS opposes HB991.**

Trees provide countless ecological services such as flood prevention, carbon sequestration, wildlife habitat, air, and water purification, and reduction of urban heat island effects. None of these services could ever be replaced by built infrastructure. Currently, Maryland loses about 3,000 acres of forest every year. Development is the single largest driver of forest loss in the state.

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 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.

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.

Woodend Sanctuary | 8940 Jones Mill Road, Chevy Chase, Maryland 20815 | 301-652-9188

Rust Sanctuary | 802 Childrens Center Road, Leesburg, Virginia 20175 | 703-669-0000

anshome.org

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:

- capacity and location of active banks;
- regulation of citing siting and creation of new banks;
- geographic limitations on the use of mitigation banks;
- the relationship between fee-in-lieu rates under the Forest Conservation Act and the market for forest mitigation banks; and
- 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.

On behalf of ANS and our 28,000 members and supporters, ANS respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Sincerely,
Denisse Guitarra
Maryland Conservation Advocate
Audubon Naturalist Society

HB0991 2021-converted.pdf

Uploaded by: Hammond, Paulette

Position: UNF



Maryland Conservation Council

Protecting Maryland's Natural Heritage Since 1969

2304 South Road
Baltimore, MD 21209-4430
www.mdconservationcouncil.org

Re: House Bill 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation

29 March 2021

Dear Chairman Pinsky and Committee Members:

The Maryland Conservation Council respectfully OPPOSES HB 991 and requests an unfavorable report from the Education, Health, and Environmental Affairs Committee.

As one of the oldest environmental organization in Maryland (established in 1969), we are dedicated to preserving our natural environment. This legislation would allow counties to use preservation of existing trees in a forest mitigation bank to replace replanting requirements for trees removed under the Forest Conservation Act (FCA). This would codify practices that result in greater forest loss during development, negatively impacting the amount of trees, which are important for pollution reduction, preventing soil erosion and lowering CO₂ emissions.

For instance:

This legislation will lead to additional net loss of trees statewide. It would allow development projects to remove up to 100% of the forest on a site with no replanting. There are no standards ensuring that the forest offered for preservation has high ecological value or is at risk of being lost to development.

This legislation would reverse the recent opinion of the Attorney General that clarified the parameters for how counties use forest mitigation banks. 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.

This legislation pre-empts the anticipated Forest Conservation report underway by the Hughes Center. The Hughes Center Report was [requested by the General Assembly](#) to clarify data needed for educated decision-making in forest conservation. The report is specifically charged with investigating appropriate uses of forest mitigation banks.

We strongly urge you to move unfavorable HB991 - Natural Resources - Forest Mitigation Banks - Qualified Preservation, which is coming over from the House and had no cross-file.

Cordially,
Paulette Hammond
President, Maryland Conservation Council

401 Westshire Road
Baltimore, MD 21229
443-418-5479

HB 991 Testimony Senate.1(6) (1).pdf

Uploaded by: Hummel, Lani

Position: UNF

TO: Education, Health and Environmental Affairs Committee

FROM: Lani Hummel

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

POSITION: OPPOSE

I respectfully OPPOSE HB 991 and request 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 completed.

Maryland's Forest Conservation Act (FCA) was passed in 1991 to reduce forest loss from development, the single largest driver of forest loss in the state. The FCA requires replanting trees to offset a bare minimum of losses on development sites, which 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 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.

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 require a technical study that will include stakeholder feedback and analyze the following:

- Capacity and location of active banks
- Regulation of siting and creation of new banks
- Geographic limitations on the use of mitigation banks
- Relationship between fee-in-lieu rates under the FCA and the market for forest mitigation banks
- Determination of whether the use of forest mitigation banks could provide water quality improvements and other benefits

This information is critical to identifying the appropriate role of mitigation banks in maintaining forest cover across the state.

In summary, HB 991 would codify a major mitigation policy without the information this committee identified as critical for updating mitigation standards within the FCA. 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.

For these reasons, I respectfully request an UNFAVORABLE report from the Committee on HB 991.

Thank you for your consideration.

Arundel Rivers Federation comments on HB 991.pdf

Uploaded by: iliff, jesse

Position: UNF

TO: Education, Health, and Environmental Affairs Committee

FROM: Jesse L. Iliff, South, West & Rhode Riverkeeper, Arundel Rivers Federation, Inc.

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

POSITION: OPPOSE

Arundel Rivers Federation, Inc. 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 concomitant reforestation effort. Additionally, the bill is premature because the forest mitigation study directed by the General Assembly via SB 729 of 2019 is not yet complete. The study contemplated by SB 729 of 2019 will consider the exact practice that HB 991 would usher in, i.e., counting preservation of forest as sufficient to offset loss of forest through development. Passing HB 991 now would obviate the intent of the General Assembly from two years ago, and the bill should be held by the committee in order to allow prior legislative efforts to come to fruition.

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, dirtier air, increased temperatures, localized flooding, and lower property values. Development is the single largest driver of forest loss in the state.

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 than that required by existing law.

Preservation of existing forest is certainly a valuable practice during development, but only with appropriate tools and guidelines in place to identify the most valuable and at-risk forest 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, will consider forest mitigation banking in the State, including:

1. capacity and location of active banks;
2. regulation of 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.

Arundel Rivers Federation, Inc. respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Thank you for the opportunity to present these comments.

Respectfully Submitted,



Jesse L. Iliff, Esq.
South, West & Rhode RIVERKEEPER®

CCWG HB991 Testimony for Submission.pdf

Uploaded by: Kyde, Kerrie

Position: UNF

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.

Kerrie Kyde
Myersville MD
For the Executive Committee of the Climate Change Working Group of Frederick County



Griscom, B.W. et al. 2017. Natural climate solutions. PNAS 114 (44) 11645-11650; first published October 16, 2017; <https://doi.org/10.1073/pnas.1710465114>

Cook-Patton, S.C., Leavitt, S.M., Gibbs, D. et al. Mapping carbon accumulation potential from global natural forest regrowth. Nature 585, 545–550 (2020). <https://doi.org/10.1038/s41586-020-2686-x>

2021hb991oppose-converted.pdf

Uploaded by: Markovitz, Lisa

Position: UNF

The People's Voice



The People's Voice LLC
3600 Saint Johns Lane, STE D
Ellicott City, MD 21042

March 26, 2021

TO: Education, Health, and Environmental Affairs Committee

FROM: The People's Voice, a civic/political entity with over 4,000 members in Howard County and over 500 in Montgomery County.

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

POSITION: OPPOSE

The People's Voice 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. **The task force on this topic had a deadline for a report of December 1, 2019, and that input should be addressed.**

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.

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.

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:

By Authority: The People's Voice PAC, Lisa Markovitz, Treasurer

1. capacity and location of active banks;
2. regulation of 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.

The People's Voice respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Sincerely,

Lisa Markovitz

President, The People's Voice

HB 991_OPPOSE_3.31.2021_MDEHR.pdf

Uploaded by: Miller, Claire

Position: UNF

TO: Education, Health, and Environmental Affairs Committee

FROM: Claire Miller, Maryland Campaign for Environmental Human Rights

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

POSITION: OPPOSE

The Maryland Campaign For Environmental Human Rights 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.

But trees enhance neighborhoods. Property values, mental health, economic activity, tax receipts, all **increase** with the presence of mature trees **in the very place where development is happening**. We need to protect both our existing forest patches as well as protect trees in areas targeted for development.

In addition, all trees and all forests are not equal. Where they are, what they are, their age, etc all are essential to assessing their contributions to our natural and built ecosystems.

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.

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.

The Maryland Campaign for Environmental Human Rights respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Copy of FILE-4045.docx.pdf

Uploaded by: Nubah, Maisha

Position: UNF



TO: Education, Health, and Environmental Affairs Committee

FROM: [Maisha Nubah, Sunrise Movement Maryland]

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

POSITION: OPPOSE

Sunrise Movement Maryland 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.

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 than required by the very limited authorization in existing law.

Preservation of existing forests 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.

As a climate activist, I am personally against it because I believe that this bill will be harmful to our environment. Deforestation in Maryland will result in soil erosion, fewer crops, flooding, increased greenhouse gases in the atmosphere, etc. Sunrise Movement Maryland strongly opposes this bill since it will directly negatively impact the youth. Deforestation causes an increase in the spread of life-threatening diseases such as malaria and dengue fever. We need to keep our environment stable for our generation and the next generation. This bill is not good for the Maryland youth, and we don't know all the answers to the report from a technical study mentioned above.

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 the existing forest offered for credit.

Sunrise Movement Maryland respectfully requests an UNFAVORABLE report from this Committee on HB 991.

WISE testimony HB 991 Forest Mitigation Banks.pdf

Uploaded by: O'Connor, Monica

Position: UNF



Committee: Education, Health and Environmental Affairs

Testimony on: HB991 Natural Resources- Forest Mitigation Banks- Qualified Preservation

Organization: WISE

Submitting: Monica O'Connor

Position: Unfavorable

Date: March 31, 2021

Dear Chairman Barve and members of the Committee

WISE strongly opposes HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation.

WISE is a grassroots organization of over 500 women in Anne Arundel County. As an organization we have worked hard to elect representative who support strong forest conservation practices and curb runaway development. Our County suffered tree loss to development for years – to the detriment of the Chesapeake Bay and communities throughout the County. We are deeply concerned that unless loopholes to forest mitigation plans are rectified developers will once again take advantage of faulty laws extreme tree loss will continue. HB199 is a bill that allow such loopholes and as such we stand in opposition to this bill.

We urge you to vote unfavorably on this bill – or, at the least, to amend accordingly.

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.***

If the bill is passed out of Committee without these amendments, our posture will be in opposition to this bill.

HB0991_Forest_Mitigation_MLC_UNFAV.pdf

Uploaded by: Plante, Cecilia

Position: UNF



TESTIMONY FOR HB0991

NATURAL RESOURCES – FOREST MITIGATION BANKS – QUALIFIED PRESERVATION

Bill Sponsor: Delegate Gilchrist

Committee: Education, Health and Environmental Affairs

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

POSITION: OPPOSE

The Maryland Legislative Coalition respectfully OPPOSES HB 991 and requests an unfavorable report from the Education, Health, and Environmental Affairs Committee. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

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.

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.

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.

The Maryland Legislative Coalition respectfully requests an UNFAVORABLE report from this Committee on HB 991.

HB991_CleanWaterAction_Oppose_EmilyRanson.pdf

Uploaded by: Ranson, Emily

Position: UNF



**HB991: Natural Resources – Forest Mitigation Banks – Qualified
Preservation**

Senate Education, Health, and Environmental Affairs
March 31, 2021

Positon: Oppose

Dear Chairman Pinsky and Members of the Committee,

Clean Water Action respectfully opposes HB991 and requests an unfavorable report. In 2019, the General Assembly passed SB729, a technical study on forest conversation in Maryland. It is premature to change the Forest Conservation Act without this analysis.

Until that study is complete, we do not have the information that we need to identify the appropriate role of mitigation banks in maintaining forest cover across the state. Many of the same stakeholders supporting and opposing this legislation are actively involved in the study, and we feel that it is most appropriate to wait until *after* the study is completed to change provisions of the Forest Conservation Act.

HB991 would codify a major modification of the Forest Conservation Act without the information that this committee and others identified as critical to updating standards within the FCA. It would make drastic changes without setting parameters or priorities for the development risk, location, or ecological value of existing forest offered for credit.

It is premature to make this change, and Clean Water Action respectfully requests an UNFAVORABLE report.

Best,

Emily Ranson
Clean Water Action
eranson@cleanwater.org
410-921-9229

HB991 Opposition Testimony.pdf

Uploaded by: Richards, Annie

Position: UNF



Testimony in Opposition to **House Bill 991 – Natural Resources - Forest Mitigation Banks - Qualified Conservation**

March 24, 2021

Dear Chairman Pinsky and Members of the Committee,

Thank you for this opportunity to submit testimony **in opposition to HB 991 - Natural Resources - Forest Mitigation Banks - Qualified Conservation** - on behalf of ShoreRivers. ShoreRivers is a river protection group on Maryland's Eastern Shore with 3,500 members. Our mission is to protect and restore our Eastern Shore waterways through science-based advocacy, restoration and education.

On the Eastern Shore, trees are the most important resource to help mitigate sediment and nutrient pollution, and to prepare our vulnerable shorelines for sea level rise, extreme storms events, and other harmful effects associated with climate change. **A bill that allows development projects to remove up to 100% of the trees on a site with no mandated replanting poses a terrible threat, which undermines the gains environmental non profits and municipalities alike have worked so hard to fund, and implement.**

This legislation preempts the anticipated Forest Conservation report underway by the Hughes Center. The Hughes Center Report was [requested by the General Assembly](#) to clarify data needed for educated decision-making in forest conservation. The report is specifically charged with investigating appropriate uses of forest mitigation banks. **It is unreasonable to pass a bill with such extreme impacts before the results of this comprehensive study.** Additionally, this legislation would reverse the *recent* opinion of the Attorney General (AG) that clarified the parameters for how counties use forest mitigation banks. In effect, this bill would save half (or fewer) of the forests than were being preserved last year. Worse still, there are no standards ensuring that the forest offered for preservation has high ecological value or is at risk of being lost to development.

When engaging with County departments as the Chester Riverkeeper on matters related to development in my watershed, I receive consistent feedback that the environmental regulations set by the State are not strong enough to justify rejecting projects that are inconsistent with their Comprehensive Plan. Counties caught between economic opportunity and their duty to preserve their rural character and resources will be powerless to advocate for their interests, without being viewed as punitive and arbitrary, when the State of Maryland adopts such low standards of preservation. **Developers will be empowered to cut down every bit of forest not under permanent protection, getting further away from a no-net-loss goal.** Every tree counts on the Eastern Shore. For this reason and the examples described above, ShoreRivers looks for an **unfavorable report for House Bill 991.**

Sincerely,

Annie Richards, Chester Riverkeeper on behalf of:

ShoreRivers

Isabel Hardesty, Executive Director

Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper

Elle Bassett, Miles-Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

Main Office

114 S. Washington St.
Suite 301
Easton, MD 21601
443.385.0511

Regional Office

111A North Main St.
Galena, MD 21635
410.810.7556

shorerivers.org

Regional Office

207 S. Water St.
Unit B
Chestertown, MD 21620
410.810.7556

CRC Testimony HB991.pdf

Uploaded by: Schinasi, Katherine

Position: UNF



Corsica River Conservancy
P.O. Box 235
Centreville, MD 21617
March 29, 2021

Senate Education, Health, and Environmental Affairs Committee

FROM: Katherine Schinasi, Vice President, Corsica River Conservancy

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

POSITION: **OPPOSE**

Corsica River 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. Decisions on the best and most equitable approach to protecting Maryland's forests should be made by the Committee after the forest mitigation study directed by the General Assembly via SB 729 of 2019 is complete.

Forests are particularly important in the Corsica River watershed. The 15-year coordinated State, County, local, and volunteer efforts to remove the Corsica from EPA's impaired waters list have shown progress. Continued restoration depends heavily on healthy habitat and buffered streams, both of which are at risk from tree loss. 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 and development pressures are increasing in our county. We have already seen significant deleterious water quality effects from tree loss in large developments.

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.

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, contains many issues related to forest mitigation banking; information that 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 already have or are moving toward strengthened 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 the General Assembly 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.

Corsica River Conservancy respectfully requests an UNFAVORABLE report from this Committee on HB 991.

<http://corsicariverconservancy.org>

MOS HB0991 Forest Mitigation Banks March 2021.pdf

Uploaded by: Schwarz, Kurt

Position: UNF



March 31, 2020

HB0991 Natural Resources – Forest Mitigation Banks – Qualified Preservation

Position: Oppose

The Maryland Ornithological Society (MOS) opposes HB0991 and asks for an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

HB0991 would result in greater forest loss during development without providing an effective preservation benefit. We find this bill to be premature until such time as the forest mitigation study directed by the General Assembly via SB0729 of 2019 is completed. We ask the Committee to hold the bill until the study is finished.

Maryland is losing approximately 3,000 acres of forest every year. Clearing forest degrades water quality in local streams, rivers and the Chesapeake Bay, fragments wildlife habitat, reduces carbon sequestration, increases temperatures, and can exacerbate local flooding. Development is the single largest driver of forest loss in the state.

HB0991 would authorize forest mitigation banks to offer credit for placing a preservation easement on trees that already exist, rather than planting new trees. A new development site could remove an existing forest, and would not be required to replant. This will exacerbate forest loss.

Preservation of existing forest is important, but requires attention to identify valuable and at-risk tracts. The study instituted by SB0729 of 2019 is to provide just such information, inventorying mitigation banks, establishing regulations for them, and ascertaining the relationship between fee-in-lieu rates under the Forest Conservation Act and the market for forest mitigation banks. Furthermore, several Maryland counties have strengthened their forest conservation laws. The information collected by the S0729 study is vital for defining mitigation banks. To allow them to be used before they are defined makes no sense. And forest preservation should not come at the expense of allowing developers to not replant.

Forests provide valuable habitat for the birds that we seek and study. At the same time, our bird populations continue to decline. A recent study showed that North America lost 3 billion birds, 29% of its total bird population, since the 1970s.¹ Forest loss will impact Forest Interior Dwelling Species (FIDS) such as Ovenbird, Scarlet Tanager, Wood Thrush, and Kentucky Warbler. We seek out these species every spring, through the summer, and into fall migration. While Marylanders generated

¹ Rosenberg, et al, Decline of the North American Avifauna, Science, vol 366, issue 6461, pp. 120-124, 4 October 2019, <https://science.sciencemag.org/content/366/6461/120>

\$483 million from wildlife-watching activities in 2011, the Total Industrial Output (TIO), which includes, direct, indirect, and induced effects, totaled over \$909 million, produced 10,807 full- and part-time jobs, and generated \$88.4 million in state and local tax revenue. Nationally, Americans who watch and feed birds contribute \$41 billion to the nation's economy every year.²

In conclusion, we oppose HB0991, as premature and it will also promote forest loss, impacting the Bay, birds, and climate.

MOS respectfully requests an UNFAVORABLE report from this Committee on HB0991.

MOS is a Maryland-based volunteer organization of some 1200 members, with 15 chapters in Maryland. We are devoted to the study and preservation of birds and their habitat.

Sincerely,

Kurt R. Schwarz
Conservation Chair
Maryland Ornithological Society
www.mdbirds.org
9045 Dunloggin Ct.
Ellicott City, MD 21042
410-461-1643
krschwa1@verizon.net

² US Fish and Wildlife Service, Economic Impact: Birds, Birdwatching and the U.S. Economy, November 16, 2017, <https://www.fws.gov/birds/bird-enthusiasts/bird-watching/valuing-birds.php>

HB991_Comments_3-28-2021.pdf

Uploaded by: Snow, Laurie

Position: UNF



Mattawoman Watershed Society

Protecting and preserving Mattawoman Creek for the enjoyment of all.

TO: Education, Health, and Environmental Affairs Committee

FROM: The Mattawoman Watershed Society

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

POSITION: OPPOSE

The Mattawoman Watershed Society 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, effectively erasing conservation in Maryland. This bill is misguided and premature, since the forest mitigation study directed by the General Assembly via SB 729 of 2019 is not complete. The Committee therefore should hold any further action until work 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 Charles County's Comprehensive Plan, entitled *Quality Places, Natural Spaces*, the county found that the current rate and extent of forest lost to development is unacceptable. Charles County's population grew by almost 40% over the past twenty years, a *rate which leads the state*. From 1997 to 2009, 13,245 acres of forest fell – *seven percent of the County's total forest acreage*. This is a staggering number over just 12 years. Since that time, local annual forest conservation reports and high-resolution data from the Chesapeake Bay Program both show that Charles County ranks third in the state for forest loss. These losses have come with a substantial cost to clean water and quality of life. Looking forward, the Maryland State Data Center forecasts that more than 50,000 residents could move into the County by 2040.

In "The Case for Protection of the Watershed Resource of Mattawoman Creek," from DNR, impervious surface threatens to destroy the world class sport fishery and sensitive fish spawning habitat, with 28 species of plants and animals considered rare, threatened or endangered. About 55% of the 63,000 acres of the Mattawoman watershed provides habitat for Maryland's native natural communities which are present because of the forest. The benefits people gain from the Mattawoman ecosystem include regulating services, such as water purification and stormwater management, supporting services, such as soil and nutrient maintenance, and cultural services like recreation and spiritual benefits. The natural features of this area draw both residents and visitors with the county parks servicing 940,000 people per year. Forests and wetland areas are the most valuable land-form in terms of returning services to the community in the face of Climate Change. The Mattawoman Creek alone returns \$79,500,000 to taxpayers.

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. How is this a valid way to govern forests? The results is that development projects would be allowed to remove ALL of the forest on a site with NO requirement to replant 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,

which we know is inadequate. As a state with most of its population on the Coastal Plain, sea-level rise and more intense storms, should be a top priority, which would lead to greater conservation of forests, not less.

This Committee has identified additional 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.

The Mattawoman Watershed Society respectfully requests an UNFAVORABLE report from this Committee on HB 991.

Respectfully,

Laurie Snow, President

P.O. Box 201 Bryans Road, MD 20616
www.mattawomanwatershed.org mattawoman411@gmail.com
240-523-3339



HB 991_SafeSkies_OPPOSE_3.31.2021.pdf

Uploaded by: Southerland, Mark

Position: UNF

TO: SENATE Education, Health, and Environmental Affairs Committee

FROM: Mark Southerland, PhD, Safe Skies Maryland

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



POSITION: OPPOSE

Safe Skies Maryland 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.

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.

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.

Safe Skies Maryland respectfully requests an UNFAVORABLE report from this Committee on HB 991.

HB991 - Forest Mitigation Banks-Qualified Conserva

Uploaded by: Tulkin, Josh

Position: UNF



7338 Baltimore Ave
Suite 102
College Park, MD 20740

Committee: Education, Health, and Environmental Affairs
Testimony on: HB991 – “Forest Mitigation Banks – Qualified Conservation”
Position: Oppose
Hearing Date: March 31, 2021

The Maryland Sierra Club strongly opposes HB991 as currently drafted. However, if the Senate amends the bill to **sunset the effective life of the new forest mitigation banking program** proposed by the bill, we would agree that a “favorable with amendments” report is appropriate.

The proposal to enact a new, permanent mitigation banking program threatens to substantially undermine the state’s Forest Conservation Act (FCA), and is a significant change to existing law.

Moreover, enacting this now as a permanent change is completely at odds with the bill’s separate requirement that a broad study of forest policy – including mitigation banking – be undertaken to determine what changes may be needed to the FCA. Indeed, the Senate is on record since 2017 that a comprehensive FCA study is needed, which includes a review of forest mitigation banking. Making a permanent change now to mitigation banking improperly puts the legislative cart far in front of the horse.

Mitigation Banking -- Background

HB991 would amend the FCA, whose purpose is to protect the state’s valuable forests by mitigating the impacts of development on forested areas. The Act seeks to do this by requiring developers whose project sites include forested land to take certain prescribed steps to offset the impact of their development on the state’s forests. The preferred approach is for developers to retain forests located on-site. However, if that cannot be done within the parameters of the Act, developers then must take measures off-site to offset the on-site impacts.

One of the several off-site measures available to developers under the FCA is forest mitigation banking. The Act defines mitigation banking as follows: “the intentional restoration or creation of forests undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits from future activities.”

As explained in a legal opinion issued by the Attorney General last year, this statutory language means that a mitigation bank only may be applied to land “intentionally afforested or reforested for the express purpose of creating a mitigation bank,” in other words, to land on which trees were planted to create the mitigation bank. 105 Op. Att’y 66.¹

The key point is that, under the FCA as written, and as explained by the Attorney General, mitigation banking does not include “the placement of a protective easement on already-existing forest.” *Id.*

This limitation on mitigation banking makes eminent sense. For example, if a developer places a protective easement on already-forested land and that forest has little or no risk of being cut down,

¹ <https://www.marylandattorneygeneral.gov/Opinions%20Documents/2020/105oag066%20.pdf>. The opinion includes a very detailed and comprehensive discussion of FCA provisions relating to mitigation banking, and the legislative history of these provisions.

Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 75,000 members and supporters, and the Sierra Club nationwide has over 800,000 members and nearly four million supporters.



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counting that easement as mitigation banking would say that the developer has thereby offset the destruction of forest located on the development site when, in reality, no offset has occurred.

Notwithstanding the clear requirements of the FCA regarding mitigation banking and the sound policy concerns that underlie these requirements, some localities, supported by the Department of Natural Resources, have over time allowed developers to offset the impact of their developments on forested areas by establishing mitigation banks which place “a protective easement on already-existing forest.” In other words, there apparently has been a longstanding series of FCA violations.

Recent Legislative Efforts to Review and Strengthen the Forest Conservation Act

The past few years have seen a vigorous and ongoing debate regarding the adequacy of the FCA, and whether it should be strengthened to better protect Maryland’s forests. Mostly as a result of development, the state is losing about 3,000 acres of forest every year. Forests are a crucial and invaluable state resource – they protect water quality, provide wildlife habitats, sequester carbon, improve air quality, and reduce flooding.

In 2017, the Senate passed a bill to undertake a comprehensive study of the FCA. However, the bill was not passed by the House.²

In 2018, this Committee reported favorably with amendments a wide-ranging bill to strengthen the FCA. The bill was amended on the floor to instead institute a study, and the Senate passed the bill in that form. The House passed the bill with somewhat different study provisions, and the session ended before the two versions could be reconciled.³

In 2019, the General Assembly finally did enact legislation to require a comprehensive study of the status of Maryland’s forests and the state’s forest protection efforts.⁴ The study was to be completed by December 1, 2019, but was not done.

The 2019 study, according to the legislation, was to include “a review of forest mitigation banking in the State.” The 2017 and 2018 study bills also sought a review of forest mitigation banking.

HB991

This legislation would do three things. First, it would retroactively validate all forest mitigation banks previously granted for already-existing forest so long as “they were approved in good faith.” Second, it would permanently amend the Forest Conservation Act to specify that forest mitigation banks may include the placement of “a restrictive easement, covenant, or another similar mechanism” on land that already is forested. Third, it would revive the forest study legislated in 2019, specifying that it now

² Introduced by Senator Young and Delegate Healey, the bill in its original form sought to make certain targeted substantive changes to strengthen the FCA (SB365/HB599).

³ This bill also was introduced by Senator Young and Delegate Healey, and began as a comprehensive reform bill (SB610/HB766).

⁴ The 2019 legislation was sponsored by Senator Guzzone and Delegate Healey). Ch. 405, SB729 (2019).

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should be completed by December 1, 2023 (four years after the original completion date). The study again is to include “a review of forest mitigation banking in the State.”

With regard to the retroactive validation of past FCA violations, we do not object to this provision. Our view is based on the extent to which there apparently was a general – although mistaken – understanding that mitigation banks could be placed on already-forested land, and the problems that would occur if one were to try to now revisit the developments that made use of unlawful mitigation banks.

We also agree it is important that the long-delayed forest study be undertaken. However, we do not agree that it is necessary or appropriate to allow for another two and a half years for the study to be completed. As noted above, the 2019 legislation sought to have the study done in about six-months time.

On the other hand, we strongly object to a permanent modification of the FCA that would allow forest mitigation banks to include the protection of already-forested land. This is bad policy, and is wrong as a matter of legislative process.

Notwithstanding that the practice has been to permit the banking of already-forested land, that was not what the FCA was written to allow. Accordingly, this bill would make a major change to the FCA. And, as discussed above, this change may substantially undermine the ability of the FCA to achieve its mission since it would allow developers to obtain what essentially are “sham” offsets by protecting forests which are at little or no risk of being cut down. This is exactly the wrong direction to go when the state already is losing forests every year, and the FCA is not adequately protecting them.

Furthermore, it is inappropriate to make this permanent change at the same time that the General Assembly is requiring a forest study, which is to include a study of forest mitigation banking. Indeed, as recounted above, the Senate is on record since 2017 that no changes to the FCA should be made until a comprehensive FCA study is prepared, including a study of forest mitigation banking.

In short, the FCA study should precede a permanent change to forest mitigation banking, not come after the change has been legislated.

Given that mitigation banking of already-forested land has been an ongoing practice, and the General Assembly is not in a position to undertake a comprehensive review of the FCA in this session, we would not object to a relatively short validation of that practice going forward. In other words, we urge that if this practice is to be legislated going forward, we strongly believe that it should be sunsetted.

For these reasons, we oppose the bill as currently written, but agree that that bill may go forward if amended to sunset the new forest mitigation banking provisions.

Mark Posner
Legislative Chair
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Josh Tulkin
Chapter Director
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Lily Fountain
Chair, Natural Places Committee

HB991writtentestimony_Final_3.28.pdf

Uploaded by: Williams, Richard

Position: UNF



THE EPISCOPAL DIOCESE OF MARYLAND

OPPOSE HB0991

Natural Resources - Forest Mitigation Banks - Qualified Conservation Tree Planting
Education, Health and Environmental Affairs Committee

Good afternoon Chair Pinsky, Vice-Chair Kagan, and members of the Senate Education, Health & Environmental Affairs Committee. My name is Dick Williams. I am a representative of GreenGrace, the lay-led environmental ministry of the Maryland Episcopal Diocese. The Diocese consists of 108 parishes and over 45,000 parishioners, stretching from Western Maryland to Calvert County. GreenGrace and the Maryland Episcopal Diocese strongly oppose HB0991.

The benefits of trees are well known and include drawing down carbon from the atmosphere, which is at climate crisis levels currently, reducing airborne particulate matter before being inhaled, and helping combat the heat island effect. When enough trees are present, psychological distress drops, as has been reported in numerous studies. More trees provide greater capture of stormwater, thus easing up overburdened, outdated sewer infrastructure. Trees are also a vital component of ecosystems, providing food and shelter to countless organisms.

HB0991 goes in the opposite direction. If enacted, this legislation would codify practices that result in greater forest loss due to real estate development “without providing an effective preservation benefit,” as noted by the Chesapeake Bay Foundation (CBF). The timing of this bill is unhelpful. It would be helpful, rather, to wait for the completion of the forest mitigation study directed by the General Assembly pursuant to SB0729 of 2019.

Maryland’s Forest Conservation Act was passed in 1991 to reduce forest loss from new construction development project. The Act 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.

HB0991 would authorize a tragic reversal by permitting forest mitigation banks to offer credit for placing a preservation easement on trees that already exist, rather than planting new trees. To illustrate, as per CBF advice, this process would allow development projects to remove up to 100% of the forest on a site with no replanting required at all. In addition, with no specified ratio required in the bill, development projects could get away with “half or less that required by the very limited authorization in existing law,” as the CBF notes.

GreenGrace and the Maryland Episcopal Diocese respectfully request a vote against HB0991.

HB991-UNF-CJW-Forest Mitigation Banks.pdf

Uploaded by: Younts, Diana

Position: UNF



Committee: Education, Health & Environmental Affairs
Testimony on: HB991: “Natural Resources--Forest Mitigation Banks--Qualified Preservation”
Organization: MLC Climate Justice Wing
Person
Submitting: Diana Younts, co-chair
Position: Unfavorable
Hearing Date: March 31, 2021

Dear Mr. Chairman and Committee Members,

MLC Climate Justice Wing strongly opposes HB 991. The Forest Conservation Act (FCA) has significant fundamental problems and loopholes that allow nearly a dozen acres of forests to be lost every day in the state. This bill further undercuts the FCA by protecting fewer forests, and leads to faster loss of forests. Additionally, this legislation would reverse the recent opinion of the Attorney General (AG) that clarified the parameters for how counties use forest mitigation banks. In effect, this bill would save only half (or fewer) of the forests that were being preserved last year. It also undercuts one of the major benefits of the Climate Solutions Now bill which requires the planting of 5 million trees.

The amount of mitigation required by the FCA already results in forest loss. In many planning zones, two-thirds of a fully forested parcel can be cleared before onsite or offsite mitigation is required. In the rare case where mitigation is required, only one acre of mitigation is needed for every four acres taken down. The current mitigation requirements in Maryland result in forest loss, and HB 991 would result in more loss.

Maryland needs as many forests as possible, a fact recognized by this Committee when it passed the Climate Solutions Now bill requiring the planting of 5 million trees. Forests clean our air as they intercept harmful air particulates and absorb noxious gases, such as sulfur dioxide. Forests reduce carbon dioxide. Every acre of forest saved sequesters enough carbon dioxide to equal the annual emissions of over 50 cars. Forests create clean drinking water. A survey of 27 water suppliers found that for every

10% increase in forest cover upstream of water intakes, treatment and chemical costs decreased by approximately 20%. Forests improve human health. Views of nature reduce stress. Studies show that populations living near forested areas exhibit lower asthma, diabetes, and high blood pressure rates. We pay for forest loss in ecological and economic costs. In the past 45 years, the loss of forests in the Baltimore-Washington region caused a 19 percent increase in polluted runoff costing us over \$1 billion, according to the Maryland Department of Natural Resources. Meanwhile, Bay taxpayers spend billions on projects to filter polluted runoff, which forests do for free. As more landscapes turn into shopping centers, subdivisions, and parking lots, we are forced to construct expensive man-made projects that divert and filter polluted water running off the asphalt. Many local governments are financially burdened by this work.

For these reasons, we strongly urge an UNFAVORABLE report from this Committee on HB 991.

HB991-UNF-TPMEC-Forest Mitigation Banks.pdf

Uploaded by: Younts, Diana

Position: UNF

**TAKOMA PARK
MOBILIZATION** 
Environment Committee

Committee: Education, Health & Environmental Affairs
Testimony on: HB991: “Natural Resources--Forest Mitigation Banks--Qualified Preservation”
Organization: Takoma Park Mobilization Environment Committee
Person
Submitting: Diana Younts, co-chair
Position: Unfavorable
Hearing Date: March 31, 2021

Dear Mr. Chairman and Committee Members,

Takoma Park Mobilization Environment Committee strongly opposes HB 991. The Forest Conservation Act (FCA) has significant fundamental problems and loopholes that allow nearly a dozen acres of forests to be lost every day in the state. This bill further undercuts the FCA by protecting fewer forests, and leads to faster loss of forests. Additionally, this legislation would reverse the recent opinion of the Attorney General (AG) that clarified the parameters for how counties use forest mitigation banks. In effect, this bill would save only half (or fewer) of the forests that were being preserved last year. It also undercuts one of the major benefits of the Climate Solutions Now bill which requires the planting of 5 million trees.

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For these reasons, we strongly urge an UNFAVORABLE report from this Committee on HB 991.