

**HB 991\_FAV\_MML.pdf**

Uploaded by: Bailey, Angelica

Position: FAV



## Maryland Municipal League

*The Association of Maryland's Cities and Towns*

# TESTIMONY

February 24, 2021

**Committee:** House Environment & Transportation

**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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# **testimony forest easements HB0991**

Uploaded by: Cissel, Robert

Position: FAV



*"Representing the Agricultural Producers of Montgomery County"*

To: Chairman Kumar P. Barve  
Members of the Environment and Transportation Committee

February 21, 2021

RE: Montgomery Agricultural Producers (MAP) Written Testimony for  
Proposed HB0991 Natural Resources-Forest Mitigation Banks

On behalf of the Montgomery Agricultural Producers (MAP), please accept this correspondence as written testimony regarding Proposed HB0991 Natural Resources-Forest Mitigation Banks.

MAP strongly supports HB0991. Many of our farmer members have participated in forest mitigation banks. They have done this not only for additional income, but to assist with protecting areas of forest for future generations. We believe this bill will fix the confusion brought about by the Attorney General and will keep this program viable for the future.

We urge support of HB0991

Sincerely,

Robert Cissel  
Director Montgomery Agricultural Producers  
301-775-8978  
[bobcissel50@gmail.com](mailto:bobcissel50@gmail.com)

**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:**      Environment and Transportation

**POSITION:**       **FAVORABLE**

**DATE:**             February 24, 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](mailto:cconner@baltimorecountymd.gov).

**HB0991 - FAVAMENDMENTS - FARBER -Testimony.pdf**

Uploaded by: Farber, Amanda

Position: FAV

HB0991 - Natural Resources – Forest Mitigation Banks – Qualified Preservation

**Sponsored by** Delegate Gilchrist

**Status** Hearing 2/24 at 1:30 p.m.

**Committees** Environment and Transportation

**FAVORABLE WITH 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.**

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>

**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.** So I understand why Montgomery County was concerned with the AG opinion. 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](https://montgomeryplanningboard.org/wp-content/uploads/2020/12/01_07_Forest-Conservation-Legislation-Memo-srose-edits-152021.pdf))

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) doesn’t track 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.**

**There also 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 discussion.

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

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

# **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

February 24, 2021

To: House Environment & Transportation Committee

From: Maryland Farm Bureau, Inc.

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

On behalf of our member families, I submit this written testimony in support of HB 991, legislation that establishes the use of qualified preservation 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*

# **MNCPPC Position Statement - HB 991 - Environment -**

Uploaded by: Gardner, Adrian

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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### Office of the General Counsel

221 Prince George Street, First Floor, Annapolis, Maryland 21401  
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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.

**# # #**

**MBIA Testimony HB 991.pdf**

Uploaded by: Graf, Lori

Position: FAV



February 24, 2021

The Honorable Kumar P. Barve  
Environment & Transportation Committee  
House Office Building, Room 251,  
6 Bladen St., Annapolis, MD, 21401

**RE: Support (HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation)**

Dear Chairman Barve:

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 in County's 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 than redevelopment in Montgomery County gets more expensive 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 House Environment & Transportation Committee

**HB 991 Testimony.1 (1).pdf**

Uploaded by: Hummel, Lani

Position: FAV

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

Date: February 24, 2021

Position: OPPOSE

To: Energy and Transportation Committee

From: Lani Hummel, Annapolis Roads, [lanihummel@aol.com](mailto:lanihummel@aol.com)

I am writing to OPPOSE HB 991 and request an unfavorable report from the Environment and Transportation Committee.

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 (FCA) 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. The result is a smaller net loss of forest than if the law did not exist.

Contrary to the goal of the FCA, HB 991, if enacted, 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.

For these reasons, I respectfully ask the Committee to issue an UNFAVORABLE report on HB 991.

**hb0991 - NAIOP Testimony - E&T - 2-24-21**

Uploaded by: Ballentine, Tom

Position: FWA



February 23, 2021

The Honorable Kumar P. Barve, Chair  
House Environment and Transportation Committee  
House Office Building, Room 251  
6 Bladen St., Annapolis, MD 21401

**Support w/ Amendment: HB 991 – Natural Resources – Forest Retention Banks – Qualified Preservation**

Dear, Chair Barve and Committee Members:

The NAIOP Maryland Chapters represent more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate. On behalf of our member companies, I am writing to support HB 991 with amendments.

House Bill 991 maintains the *status quo* options under the Forest Conservation Act by clarifying that forest banks that retain existing forest may be used as mitigation. The details of the bill are explained well in the Maryland National Capital Park and Planning Commission [slide deck linked here](#). Several key policy benefits both for the regulated development community and the public serve as the basis for our support:

- + Offsite mitigation banks are vital to urban, mixed-use, commercial, and industrial projects that often require more lot coverage to achieve necessary density. On-site planting for projects like these creates isolated forest stands that are difficult to manage and provide limited environmental benefits.
- + Current law and the bill require twice as much acreage to be purchased in an off-site forest retention bank than if the mitigation is completed through planting forest on-site or buying into a planted forest conservation bank. This can increase to four times the amount of forest mitigation if a project clears forest below the conservation threshold.
- + By allowing the use of both planted and retained forest banks the bill maintains a choice of mitigation options that has been available within the market and approved as qualified mitigation for many years. Without the clarifying legislation mitigation associated with existing and already approved development projects would be in question.
- + Because the mitigation bank is professionally managed and regulated, the air and water quality performance of the forest are increased compared to unmanaged tree stands.
- + The retention bank puts into permanent easement privately owned forest one of the key objectives of the state's forest management plans.

NAIOP has endorsed the Park and Planning amendments and is reviewing the DNR amendments. It is our expectation that both sets of amendments can be reconciled on a consensus basis.

**For these reasons, NAIOP respectfully requests your favorable w/ amendments report on House Bill 991.**

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Ballentine".

Tom Ballentine, Vice President for Policy  
NAIOP Maryland Chapters -*The Association for Commercial Real Estate*

cc: House Environment and Transportation Committee Members  
Nick Manis – Manis, Canning Assoc.

**HB0991-ENV\_MACo-SWA.pdf**

Uploaded by: Butler, Alex

Position: FWA



## House Bill 991

### *Natural Resources – Forest Mitigation Banks – Qualified Preservation*

MACo Position: **SUPPORT**  
**WITH AMENDMENTS**

To: Environment and Transportation  
Committee

Date: February 24, 2021

From: Alex Butler

The Maryland Association of Counties (MACo) **SUPPORTS HB 991 WITH AMENDMENTS**. 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. Amendments clarify the intent of the bill to maintain existing programs and apply retroactively.

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 extensively 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 WITH AMENDMENTS** report for HB 991.

**HB0991\_DNR\_FWA-2.pdf**

Uploaded by: McKittrick, James

Position: FWA





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

February 24, 2021

The Honorable Kumar Barve  
Chair, Environment and Transportation Committee  
Room 251, House Office Building  
Annapolis, MD 21401

The Honorable Dana Stein  
Vice Chair, Environment and Transportation Committee  
Room 251, House Office Building  
Annapolis, MD 21401

***Re: Support with Amendments – House Bill 991 – Natural Resources – Forest Mitigation Banks – Qualified Preservation***

Dear Chair, Vice Chair, and Committee Members,

The Maryland Department of Natural Resources respectfully supports with amendments 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.

Last fall, the Office of the Attorney General released an opinion which 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 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 been working closely with the bill sponsor and other proponents to develop amendments to best reflect the status quo of the program. 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.

For the above reasons, the department respectfully requests the committee grant HB 991 a favorable report provided it is thoughtfully amended.

Respectfully submitted,

James W. McKittrick

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

Director, Legislative and Constituent Services

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

**HB 991 Sign on testimony - OPPOSE w\_signatures.pdf**

Uploaded by: Fisher, Erik

Position: UNF

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

**Position: OPPOSE**

Our organizations respectfully OPPOSE HB 991 and request an unfavorable report from the Environment & Transportation 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 than 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.

**We respectfully request an UNFAVORABLE report from this Committee on HB 991.**

Erik Fisher, AICP, Maryland Assistant Director  
Chesapeake Bay Foundation

Jeanne Braha, Executive Director  
Rock Creek Conservancy

Ben Alexandro, Water Program Director  
Maryland League of Conservation Voters

Nina Cardin, Director  
MD Campaign for Environmental Human Rights

Denisse Guitarra, MD Conservation Advocate  
Audubon Naturalist Society

Robert K. Musil, Ph.D., M.P.H., President & CEO  
Rachel Carson Council

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

Katherine Schinasi, Vice President  
Corsica River Conservancy

Elle Bassett, Miles-Wye Riverkeeper  
Shore Rivers

Thomas Guay, Executive Director  
Severn River Association

Dan Smith, President  
Friends of Lower Beaverdam Creek

Jayne Duva  
Audubon Society of Central Maryland

Marney Bruce, Citizen  
Bethesda, Maryland

Mark Posner, Legislative Chair  
Maryland Sierra Club

Gary Allen, President  
Maryland Forestry Foundation

Marc Imlay, Board Member  
Mattawoman Watershed Society

Alice Wilkerson, Executive Director  
Strong Future Maryland

For more information, contact Robin Clark, Maryland Staff Attorney, Chesapeake Bay Foundation at [rclark@cbf.org](mailto:rclark@cbf.org) and 443.995.8753.

# **HB991 - Forest Mitigation Banks MDLCV - OPP.pdf**

Uploaded by: Harbeson, Kristen

Position: UNF



MARYLAND LEAGUE  
OF CONSERVATION VOTERS

February 24, 2021

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

Dear Chairman Barve and members of the Committee,

**Maryland League of  
Conservation Voters**

Lynn Heller, Board Chair  
Maris St. Cyr, Vice Chair  
Michael Davis, Treasurer  
Hon. Virginia Clagett  
Stuart Clarke  
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Maryland League of Conservation Voters strongly opposes HB 991 Natural Resources – Forest Mitigation Banks – Qualified Preservation. 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.

HB991 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 HB991.

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 HB991. Additionally, HB991 does not give priority to riparian buffers or other forests that provide t benefits in water quality, flood control, climate change, etc. HB991 gives no priority based on development risk, location, or ecological value.

HB991 is premature. In 2019, this committee helped pass SB729 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 HB991.** If you have any questions, please contact Ben Alexandro, water program director, at [balexandro@mdlcv.org](mailto:balexandro@mdlcv.org).

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