March 1, 2023

BILL NUMBER: **House Bill 530 – First Reader**

SHORT TITLE**: Natural Resources - Forest Mitigation Banks and the Forest Conservation Fund - Alterations**

DEPARTMENT'S POSITION: **SUPPORT**

EXPLANATION OF DEPARTMENT'S POSITION:

The Department of Natural Resources supports HB530. The bill clarifies that retention mitigation banking is an acceptable means of mitigating for the Maryland Forest Conservation Act (FCA). Qualified conservation banks will be permitted as a mitigation option and a means to protect stands of grown trees of interest at no cost to the state. Retention mitigation banking is one of few developed-area conservation strategies for mature forests. Holding on to older forests recognizes the tremendous benefits of carbon storage and sequestration, as well as the potential for carbon markets. The extension of time to achieve reforestation also provides flexibility for mitigation plantings, helping address challenges with site identification and site preparation needed prior to planting.

BACKGROUND INFORMATION:

HB 530 has been proposed to address a technical issue with the existing qualified conservation bank language as approved during the 2021 Session and allows new retention mitigation banks to be used to meet FCA requirements. Retention mitigation banking at a ratio of two acres of existing forest conserved for each one required had been used for over 20 years as an allowed method of meeting FCA requirements. In 2020, the Office of the Attorney General issued an opinion which determined that new tree planting was the only clearly authorized mitigation banking, and that those counties implementing retention of existing forest banking programs were in noncompliance. HB 991 in 2021 (Chapter 645) authorized use of retention mitigation banking for those approved prior to 2021, but did not authorize any new retention mitigation banks to be created. This bill clarifies the existing language to enable those retention banks or qualified conservation banks that were submitted or approved before December 31, 2020 to still be utilized, and allows retention mitigation banking to be used where local programs have authorized it to meet their FCA requirements

The Maryland FCA (NRA 5-1601–5-1613) applies to any subdivision plan or application for grading or sediment control permit by any person, including local, state and federal government, on areas of 40,000 square feet or greater. The Act requires that mitigation be accomplished for the land disturbance onsite, offsite, by creation of forest land banks, or by fee-in-lieu. The statute provides preferred sequences for afforestation and reforestation, priority areas for retention and protection, and priority areas for afforestation or reforestation. Prior to the Office of the Attorney General opinion, retention of existing forest banks which required preservation at a 2:1 ratio (two acres of existing forest protected for each one acre of required mitigation) was occurring in those approximately 14 counties that adopted the language in their forest conservation
ordinances.

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The Harry R. Hughes Center for Agro-Ecology recently released a report that stated that existing forest banks comprise 81% of reported bank acreage with a total of 13,997 acres. These add up to large acres of existing forest (‘usually larger trees’) that are protected from development by easements and provide landowners with a source of income. This is a means of protecting existing forest without cost to the state in locations where few other avenues are available to conserve mature forest.

BILL EXPLANATION:

HB 530 revises the definition of qualified conservation and adds a definition for qualified project as it relates to forest mitigation banks. The bill also extends the period of time allowed to achieve reforestation, and clarifies that funds can be encumbered as well as fully used by the deadlines that would otherwise trigger return of fee-in-lieu funds.