



DEVELOPMENT REVIEW BULLETIN

Bulletin No. 6-2021

Subject: HB-991 Tree Solutions Now Act of 2021
Effects on Off-site Woodland Conservation Banking Program

Resource: Environmental Planning Section, Countywide Planning Division

Date: May 17, 2021

On October 26, 2020, the Office of the Attorney General of Maryland issued a legal opinion concerning whether the Forest Conservation Act (FCA) permitted forest mitigation banks that sell credits based on the retention of existing forest. The opinion provided the following statement of **Conclusion**:

“In our opinion, the plain language of the Forest Conservation Act makes clear that the only forests in Maryland that are eligible for treatment as “forest mitigation banks” from which developers may buy credits for that offset method are forests that were “intentionally” created or restored “expressly” for that purpose and located in accordance with the Act’s “priority” location provisions. NR §§ 5-1601(o), 5-1601.1(c). Although existing trees that are preserved and protected in accordance with NR § 51607(b)(2)(ii) might meet the Act’s requirements in a municipality, existing population center, or other designated area that a local jurisdiction has designated with DNR’s approval as part of a program approved by DNR—and although a local program’s implementation of that method might have elements in common with mitigation banking—the preservation of those trees would not qualify for treatment as a “mitigation bank.”

In response to this opinion, the transfer of off-site woodland conservation credits based on the retention of existing woodlands was placed on temporary hold in Prince George’s County on February 1, 2021. The transfer of off-site woodland conservation credits consisting of afforestation/reforestation (planting) was allowed to continue, as consistent with Attorney General’s opinion and the provisions of the FCA.

During the 2021 legislative session, House Bill 991, with the support of The Maryland-National Capital Park and Planning Commission (M-NCPPEC) was submitted to the General Assembly to provide clarification on the use of off-site woodland conservation banks which use retention of existing trees for mitigation purposes. The Bill was approved and enrolled with significant revisions, amendments, and a new name (Tree Solutions now

Act of 2021). The effects of the final Bill on the local off-site woodland conservation program are described below.

Section 2 of the Bill defines the term “Qualified Conservation” as the “conservation of all or part of an existing forest that was approved on or before December 31, 2020 by a local forest conservation program for the purposes of establishing a forest conservation bank. The Bill also modifies the definition of “forest mitigation banking” to include the term “qualified conservation.” No new banks using retained woodlands can be created on or after January 1, 2021, but new banks using afforestation or reforestation methodologies may be created.

Section 8 of the Bill states that subject to Section 1, this applies retroactively to any “qualified conservation” completed, and any resulting afforestation or reforestation credits approved in good faith under a local program as a forest mitigation bank. This allows existing banks to move forward to sell transfer credits in afforestation and retention immediately.

Section 9 of the Bill states the intent of the General Assembly to review the findings in a technical study on changes in forest cover and tree canopy in Maryland required by Section 7; and consider legislative or other changes necessary to improve the implementation and effectiveness of the Forest Conservation Act, including revisions to the forest mitigation banking program. The findings of the technical study, to be completed by the Harry R. Hughes Center for Agro-Ecology, is required to be submitted to the Governor and General Assembly on or before December 1, 2023, for possible consideration in the 2024 legislative session.

Section 10 of the Bill indicates that Sections 1, 2, and 7 will sunset on June 30, 2024, and no further transfer of off-site woodland conservation credits in retention from forest mitigation banks will be allowed after that date, unless the General Assembly undertakes further action to revise or amend the FCA.

Currently, the sale of off-site woodland conservation transfer credits in both retention and afforestation/reforestation are allowed in Prince George’s County, subject to an evaluation of suitability for the proposed forest mitigation bank based on the location of the woodland impact, and priorities provided in Section 25-122(a)(6) of the Woodland and Wildlife Habitat Conservation Ordinance. A completed evaluation form for the location of the off-site woodland conservation bank proposed is required to be submitted for review and acceptance by the Environmental Planning Section, Countywide Planning prior to the transfer of off-site credits.

Information regarding the Prince George’s County Woodland and Wildlife Habitat Conservation program, including the form for the evaluation of the use of credits can be found on the Woodland Conservation page of the Environmental Planning Section’s web-site: <http://pgplanning.org/1564/Woodland-Conservation-Ordinance>

Should you have any questions regarding this Bulletin, please do not hesitate to contact the Environmental Planning Section, 301-952-3650.