



March 1, 2023

The Honorable Kumar P. Barve, Chair, and
The Honorable Dana Stein, Vice Chair
Maryland House Environment and Transportation Committee
Room 251, House Office Building
Annapolis, Maryland 21401

Dear Chair, Vice Chair, and Members of the Committee,

The Environmental Policy Innovation Center (EPIC) is writing to express our opposition to HB 942.

The Environmental Policy Innovation Center is a 30-person environmental nonprofit with staff in Maryland and more than a dozen other states across the country. Our team works extensively on the permitting and financing of ecological restoration and has extensive experience with local, state, and federal efforts to improve water quality under the Clean Water Act, stormwater regulations, and various state laws. In addition, I am a scientist with background in forest restoration research, hydrology, and conservation biology but mostly with experience in the practical application of science in pursuit of public environmental objectives.

For decades, nature-based projects and green infrastructure like stream restoration faced an uphill challenge across the country. Despite extensive science showing these approaches are a cost-effective strategy to create extensive public health and environmental benefits, engineers and government agencies preferred concrete to nature.

We now know better. And policy has finally started to shift in ways that make green infrastructure improvements easier.

Please don't reverse this and make one of our most ecologically- and cost-effective strategies harder.

I understand the motivation behind this legislation. I know that you have experience with a few stream restoration projects (Montgomery County) that a small number of residents don't like, primarily because necessary stream restoration work harms trees immediately adjacent to streams. Some tree removal is needed because dirt needs to be shifted to fill the enormous erosion canyons that have accumulated across streams through our state and region and country.¹

Those short-term aesthetic effects on trees near walking trails or public areas are real, but so is the damage that eroded, degraded streams cause to the Chesapeake Bay. Once streams start eroding like this, the damage just keeps getting worse. If you don't fix them, these damaged streams will keep dumping sediment, and phosphorus and nitrogen into the Bay. Stream restoration is effective in reversing that damage and restorations prevent it from returning, keeping thousands of tons of sediment and nutrients out of the Bay for decades to come. Many restored streams in more developed areas also become a better recreational and neighborhood resource in the long term.

¹ Some legislators may have experience with one proposed project (in Columbia) for which existing state and federal regulatory processes are proving they work - my understanding is that 3-4 state and federal agencies have already criticized that project and would likely block without significant changes.

Manipulating the Bay's Nutrition Labels

I admire legislators for the incredibly complex set of issues you need to tackle on a daily basis during session. However, I would hope that making decisions on the number of Nitrogen, Phosphorus, and Sediment credits various projects should get is not one of them. I'm sharing an analogy that might help explain why.

Think of Nitrogen, Phosphorus, and Sediment as calories. There are too many of these pollution calories coming into the Bay and we are trying to put it on a diet. Under that diet, each county and municipality - as well as state agencies - have an assigned, regulated responsibility for reducing a certain number of calories. Local government and others are allowed to come up with their own plans on how to do so but scientists and agencies have given them a tool to make that planning easier.

Those scientists and agencies have basically developed a nutrition label for every kind of land use, and green and gray infrastructure project that could help with that diet. Each project type, like stream restoration, wetland restoration, and stormwater storage, street sweeping, or rain garden has an estimated Nitrogen, Phosphorus, and Sediment reduction that scientists and managers believe that activity will provide in keeping the Bay on that diet.

And because of all the amazing funding that taxpayers and ratepayers have provided for Bay restoration, there is a lot of data available on the price of each of those options.

However, the legislation would direct you (in subsection (B)(2)(1)) to change the numbers on other projects' nutrition labels to give them more credit. It literally says, "*the Department shall provide(ing) more credits.*" We wouldn't support Congress changing the calories or sugar content reporting on our food. The same principle applies here.

Other reasons to oppose HB 942

This legislation will take away a cost-effective, national nature-based solution as a solution to improving the Bay and making local streams and their ecosystems more resilient to climate change. It will do that by:

1. Preventing counties and local government who fund stream restoration from getting regulatory credit for their projects for 10 years. Not only is this duplicative of already extensive U.S. Army Corps requirements, by doing so the bill literally makes it impossible for local government to count those projects toward their regulatory permit goals.
2. The bill purports to create a new requirement (subsection (B)(2)(II)(1)) for projects to be in the same watershed as impacts, but this is already established federal and state policy. For example, federal requirements passed by the Army Corps and EPA almost 15 years ago already require projects providing credits to occur in the same watershed as damages.
3. Climate change and Bay restoration are huge problems requiring large scale solutions. I know that advocates supporting the legislation have a hard time reconciling the use of heavy equipment and well-paid work force in fixing nature. It's easy to remember a day when green projects were all about volunteers with shovels doing little projects once a year on Earth Day. I am thankful that we don't live in that world anymore where poorly funded and small-scale environmental work was all that we did. Today, nature-based restoration gets billions in support, including from the Inflation Reduction Act, to pay for nature-repair projects that would have seemed impossible a generation ago. We need large scale projects and actions to avoid impacts from climate change, adapt to climate risks, clean up the Bay, and restore biodiversity. And yes, those large-scale projects often involve construction equipment. The solution isn't to take away this tool; the solution is to help more of the public understand the size and scale of

the solution that you and others are wisely funding to keep them safe from climate change and to restore the Chesapeake Bay.

4. Requiring public meetings on every project even though the state and local governments have funded 100-200 of these projects in the past is unnecessary. Voluntary opportunities for public notice and other mechanisms to share information about the projects with the public and to seek feedback on them already exist and are regularly used.
5. The bill is based on an incorrect picture of what is 'natural' for most of Maryland's streams and creeks. The closed canopy, bare forest floor stream corridors that I believe proponents of this legislation hope to prevent from being restored aren't natural in Maryland or the region because America's pre-colonial population of 400 million beaver would have kept a huge percentage of Maryland's streams in a natural condition of constant change and opening of canopies. We don't have room to make space for the way beavers maintain natural stream corridors. Beavers couldn't fix the deeply incised, eroded stream canyons that 100 years of their absence—and lots of extra runoff from parking lots—has produced. But the idea that the temporary loss of small areas of forest trees along restored streams is unusual or unnatural ignores our ecological history.

Takoma Park Experience

My own city of Takoma Park has seen at least two fantastic stream restorations, both of which fixed severe and rapid erosion problems. A Capital Parks and Planning Project on Sligo Creek removed many trees along deeply eroding banks and built a cascading series of rock ledges for hundreds of feet along the stream to prevent future damage from reemerging, while enhancing the pedestrian trail and replacing a bridge. A city-funded stream restoration that removed trees in an area named 'Circle Woods' similarly fixed an eroding stream in a residential area, earning the city valuable credit to meet its stormwater permit obligations. Both projects have been huge successes and are now beautiful community amenities, even though the backhoes and bulldozers and equipment were an inconvenience and eyesore for a while. As a serving City Councilmember during the time the city's project was planned and built, I received not a single public comment opposed to the project. Can you imagine that, in Takoma Park?

We hope that legislators can work with local governments and restoration project developers to get more experience with what is involved in large-scale nature-based work like stream restoration and learn about the short- and long-term benefits of this cost-effective and environmentally effective solution for the Bay.

Sincerely,



Timothy Male, PhD
Executive Director