



5550 Newbury Street
Baltimore, Maryland 21209

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,

Ecosystem Investment Partners (EIP), a private investment firm based in Baltimore, Maryland respectfully asks you to oppose the initiatives proposed in HB 942.

This legislation will unnecessarily increase the financial and regulatory burden on the State of Maryland and drastically limit its ability to continue reasonable and responsible management of its water and natural resources to improve water quality, mitigate for and protect infrastructure investments, and combat climate change. Moreover, HB 942 imposes restrictions on the processes of large-scale ecological restoration that will limit, if not eliminate, the ability for the private sector to provide the full delivery of mitigation and pollution reductions needed in Maryland.

Over the past decade, our firm has invested over \$25 million in stream restoration projects in the Bay watershed in Maryland that have eliminated over 6,500 tons of nutrients and sediment pollution, while employing dozens in the design, permitting, construction, monitoring and maintenance of stream and wetland projects across the state. HB 942 would have a direct impact on the ability of companies like ours to continue this level of investment in Chesapeake Bay restoration and conservation.

While our firm agrees that upland stormwater management practices have a place in meeting the goals of the Chesapeake Bay Total Maximum Daily Load (TMDL), these practices cannot meet the scale of nutrient and sediment reductions that the Bay needs. Moreover, because of their small scale and high cost per unit of reduction, upland stormwater practices have little or no potential to engage the private sector in delivering the reductions we need; severely hindering the very opportunity for private sector engagement recently encourage by the Conservation Finance Act of 2022.

Stream and wetland restoration is critical to not only reducing non-point source pollution, improving water quality and ensuring no net loss of water resources that result from unavoidable and permitted development, but also to addressing the realities of climate change-driven storm

events and stream channel degradation resulting therefrom. Our state's stream corridors are impaired due to centuries of deforestation, poor agricultural practices, mining, ditching, piping and urbanization. As a result, ongoing stream bank erosion is responsible for high amounts of sediment and nutrients being contributed directly to Chesapeake Bay tributaries. If pro-active efforts to halt this human-induced, artificial erosion by restoring the natural stream channel forms and functions, these deleterious effects will take geologic time to cease; time the Bay does not have and that small upland stormwater projects cannot make up for.

We offer the following point-by-point comments related to specific language in the proposed bill are as follows:

1. *Page 2, Lines 12 through 17:*

INCENTIVIZE THE USE OF ALTERNATIVES TO STREAM 12 RESTORATIONS THAT ARE LESS DESTRUCTIVE TO THE ENVIRONMENT, SUCH AS THE USE OF UPLAND PROJECTS, INCLUDING BY PROVIDING MORE CREDITS ON AN EQUIVALENT IMPERVIOUS ACRES TREATED BASIS FOR ALTERNATIVES TO STREAM RESTORATIONS FOR ACHIEVING LOCAL MS4 PERMIT TARGETS, TMDL GOALS, MITIGATION GOALS, OR OTHER RESTORATION GOALS;

Response:

There is no scientific, peer reviewed evidence that stream restoration is any more or less “destructive to the environment” than upland projects. Current crediting of these practices have undergone extensive research and peer review that resulted in the methodologies utilized today, whether for nutrient and sediment reductions or for 404 Clean Water Act mitigation.

Impervious acre crediting methodologies used to meet the TMDL already make scientific benefit comparisons between upland BMPs versus stream restoration, and there is strong evidence that while both provide benefit, stream restoration is far more cost effective.

2. *Page 2, Lines 19 through 22:*

FOR A PROJECT BEING UNDERTAKEN EXPRESSLY FOR THE PURPOSE OF PROVIDING CREDITS FOR WETLAND OR STREAM IMPACTS OR LOSSES RESULTING FROM FUTURE ACTIVITIES, BE LOCATED IN THE SAME WATERSHED AS THE WETLAND OR STREAM FOR WHICH MITIGATION IS REQUIRED;

Response:

The US Army Corp of Engineers (USACE) and Maryland Department of the Environment (MDE) currently require resource impacts to be mitigated within an 8-digit Hydrologic Unit Code (HUC) Watershed. This is consistent with how resource impacts and associated mitigation are managed across the entire US.

3. *Page 2, Lines 23 through 24:*

REQUIRE NET BIOLOGICAL UPLIFT OF INSTREAM 23 BIOLOGY AS A STATED GOAL;

Response:

Currently the MDE and the USACE (along with the USACE's interagency review teams) require that stream restoration projects result in ecological uplift through use of the Stream Functions Pyramid which includes consideration of biological improvement (Step 5 of the Pyramid). It is not practical to *require* biological uplift of in-stream biology as this is mostly outside the control of the practitioner considering offsite watershed factors such as proximity to existing thriving habitat areas and poor water quality. It is absolutely the goal of stream practitioners to improve biological function through in-stream habitat creation as well as improvement of habitat value of the adjacent floodplain corridor.

4. *Page 2, Lines 27 through 28 and Page 3, Lines 1 and 2*

MONITOR AND EVALUATE APPROVED PROJECTS FOR 10 YEARS AFTER PROJECT COMPLETION TO ENSURE STATED GOALS ARE ACHIEVED BEFORE ANY RELEVANT MITIGATION OR POLLUTION REDUCTION CREDITS ARE ISSUED FOR THE PROJECT.

Response:

Regulatory agencies currently require pre and post construction monitoring as the basis for demonstrating stream restoration purpose and need and for complying with permit performance monitoring standards to achieve stated project goals. Should monitoring result in noncompliance, credits are withheld or revoked until the performance issue is addressed through adaptive management.

Adding another, arbitrary and excessive credit release period would only result in making private-sector delivered restoration projects non-economical and non-feasible.

5. *Page 3, Line 15:*

HOLD A PUBLIC INFORMATION MEETING ON THE APPLICATION.

Response:

Regulatory agencies currently require public notices and public meetings based on specific activities and impact thresholds. Unlike upland stormwater projects (that typically do not require such opportunity for public review and engagement), permitted

stream and wetland restoration projects have ample opportunity for open review by concerned citizens and stakeholders.

We welcome any questions you may have about the work our firms do towards Chesapeake Bay restoration and stream restoration as a critical water quality and mitigation tool.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicholas Dilks". The signature is stylized with a large initial "N" and "D".

Nicholas Dilks
Managing Partner