

February 8, 2021

Statement of Robin M. Richardson in Opposition to SB 321

I object to SB 321. SB 321 seeks to repeal the termination provision of SB 93 (section 4), enacted in 2019 as Chapter 747 (full text provided in Exhibit 5). Under that termination provision, the amendments made by SB 93 to MD Code, Natural Resources, §8-725.1 will expire automatically on May 31, 2023. SB 321 repeals the termination provision of SB 93 and thus makes the amendments enacted by SB 93 permanent. This bill discriminates against all Marylanders so as to serve the special interests of a few wealthy landowners who dislike water skiing (or water skiers). For the reasons set below, I urge an unfavorable report.

A. SB 321 Is Not A Local Bill.

SB 321 permanently and effectively DENIES public access to the public Maynadier Creek water ski course. SB 321 would repeal the termination provision of SB 93 that banned (for a four year period) water skiing at Maynadier on Mondays and Thursdays (from 6pm – sunset), Fridays (after 4:00 pm), and all day on Saturday. The banned times were the very times when my family would ski, as late afternoon until Sunset, and Saturday skiing, allowed kids to ski (Exhibit 4), and allowed those of us who live in another county to have sufficient time to travel and get to the course.

My family lives in Montgomery County. We ski at Maynadier, as it has long provided a safe and accessible water ski course. We drive long distances for the opportunity to ski at Maynadier Creek. We seek no special privilege or access but merely to share the Creek as we have always shared. We routinely ski while others are paddleboarding, kayaking, crabbing, rafting, and boating nearby. Not a single person, other than these nearby objecting landowners, has ever had any problem with the use of the course by water skiers.

This state maintains only three water skiing courses for the entire state. One course is Maynadier. Maynadier is the only course in Maryland that is ideal for water skiing because it has limited traffic by high-speed boats and is sheltered from the wind on all sides. Another course is several miles away in the middle of the Severn, but that course is located in a major waterway that is heavily used by motorboats, which generate constant and significantly sized wakes. That course is also wide open and thus unsuitable and unsafe in windy conditions. Such wakes and wind make water skiing quite dangerous.

B. Regulations Already Limit Ski Hours -- But SB 321 Would Repeal the Termination Provision of SB 93/Chapter 747, Thus Effectively Continuing To BAN Skiing For Working Persons And Students.

This bill is not necessary. Indeed, when enacted in 2019, SB 93 was not necessary, because regulations already limited the hours that water skiers may ski on the three controlled water ski courses. There is certainly no reason to make these restrictions permanent. State-wide regulations already apply to all public water ski courses. Specifically, COMAR 08.04.16.01.C.(4), the Maryland Department of Natural Resources (DNR's) regulation, provides that, "[a] person shall not operate or give permission to operate a vessel for the purpose of towing a water skier on the slalom ski course on Saturdays, Sundays and State Holidays between 12 noon and sunset during the months of June, July or August." Thus, the current regulations limit weekend and holiday hours during the summer only, and preclude skiing between noon and sunset on Saturdays, Sundays and holidays during the summer. Under SB 93, as

enacted in 2019, those regulations would once again become applicable to Maynadier after May 31, 2023.

In 2019, SB 93 effectively abrogated those State-wide regulations by amending MD. Code, Natural Resources, § 8-725.1, to ban skiing, for a 4 year period between 2019 and 2023, on Mondays and Thursdays (from 6pm – sunset), on Fridays (after 4:00 pm), on Saturdays (all day), on Sundays (from noon until sunset), and on holidays (all day). In addition, SB 93 applies year round, including during the late Spring (April and May) when the skiers usually start to get in the water, and the early Fall months (Sept-October), when skiers would appreciate being able to ski at Maynadier. (Exhibit 5).

SB 321 would, by legislative fiat, make SB 93 permanent, and therefore eliminate the ability of the DNR and the Maryland Boat Advisory Committee (BAAC) to study and consider how best to allow public access to the waterways. Indeed SB 321 eliminates the compromise provision of SB 93 (Section 3) that directed DNR to provide a study after 3 years, or in 2022. (Exhibit 5). The SB 93 study provision provides, “*SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1, 2022, the Department of Natural Resources shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the implementation of this Act.*” (Exhibit 5). SB 321 renders this provision moot by repealing the termination provision one year before the study is due. By repealing the termination provision, SB 321 would make permanent SB 93’s unfair and limited times to water ski, all without affording the DNR an opportunity to conduct the study that SB 93 required of it when SB 93 was enacted in 2019. The DNR study was an essential provision of SB 93. Making SB 93 permanent without even affording the DNA an opportunity to conduct the required study, or waiting for the results of that study, is bad faith.

C. The Skiers Ski Only 5 Hours Per Week.

As the skiers logs demonstrate, the skiers engage in very limited use of the Creek. Indeed, the skiers have long made these logs available to the homeowners and it would appear that SB 93 used these very logs to target days on which to prohibit skiing. As a result of SB 93/Chapter 747, the skiers ski only 5 hours per week on average at Maynadier. The actual time of a pass during the ski course is only about 30-40 seconds. Thus of the 5 hours that the boats are on the Maynadier course, only a very small percentage of that time is spent actually skiing.

D. The DNR And The BAAC Had A Public Hearing On This Same Issue.

SB 321 would, by fiat, divest the appropriate government entities of their authority to study and regulate water skiing. As enacted in 2019, SB 93 would have returned Maynadier to the jurisdiction of the DNR and the BAAC. SB 321 should be seen for what it is: an attempt to do an end run around the DNR and the BAAC.

The DNR and the BAAC have already thoroughly studied the Maynadier Ski course. On October 11, 2016, the DNR and the BAAC conducted a formal public hearing to evaluate the landowner’s 2016 proposal to limit the Maynadier ski course hours. The DNR and the BAAC posted prior notice of the proposal and accepted submissions, provided an opportunity to be heard, reviewed submissions, and considered the proposal. All concerned persons had a full and fair opportunity to be heard. In fact, the landowners fully participated and were able to voice their concerns at that time.

The testimony before the DNR and the BAAC demonstrated that “ski boats have a very small wake,

smaller than windblown wakes,” and skiers and ski boats “are not disrupting the creek, there’s not an environmental problem.” (BAAC Fall Meeting Tr. at p.152: 15-16 & p.155: 11-12 (Oct. 11, 2016) (statement of Mr. Wilson). Further, DNR did a study by Dr. Dennison, an independent expert, who found that “the skiing had no effect on the growth of submerged aquatic vegetation in the creek.” (*Id.* at p. 157-58 20-3) (statement of Mr. Schaffer), http://dnr.maryland.gov/boating/Documents/BACC_transcript_10-11-2016.pdf.) As BAAC expert, Stephen Kling, concluded:

[T]his was some of the most compelling ... and comprehensive testimony that I have heard. I think from the people wanting to roll back the hours we heard just the general, vague, erosion, other use. I mean the kind of things we often hear. And the skiers were, I thought, as organized and as fact-driven as anybody I can remember hearing. **And the fact that we’re talking about at most 14 boats, I was rafted up in that creek in June, six boats, skiers came in, absolutely no problem, there was people using the creek, it was absolutely not an issue....**

(*Id.* at p.206: 1-16 (Oct. 11, 2016) (statement of Mr. Kling) (emphasis added), http://dnr.maryland.gov/boating/Documents/BACC_transcript_10-11-2016.pdf.) Based on their review, the BAAC and the DNR denied the proposal and issued “**No Change To The Current Regulation.**” (http://dnr.maryland.gov/boating/Pages/regulations/regs_dis2016.aspx.) As then-Chairman Christopher Parlin concluded after the evidentiary hearing:

We talked about equal and trying to share the use of the water, state waters, amongst all user groups. One of the folks had a very good comment and that is there are only three regulated ski courses in the state of Maryland so for our professional water-skiers or those striving to be professionals or highly skilled waterskiers, not your weekend folks going out and finding a smooth body of water I think we’re accomplishing that goal by giving them a place to ski and giving them the hours to ski.

(BAAC Fall Meeting Tr. at p. 209: 11-21 (Oct. 11, 2016) (statement of Mr. Parlin) http://dnr.maryland.gov/boating/Documents/BACC_transcript_10-11-2016.pdf.) The DNR and the BAAC have done an excellent and professional job managing this recreational waterway by balancing the diverse public uses of the Severn River. The DNR and the BAAC are the waterway experts. SB 321 erodes their authority. This bill undermines public trust in both the legislative process and access to the public waters.

E. For 28 Years, DNR Has Regulated The Maynadier Course.

The course has been in existence for over 50 years. Since 1991, the Maynadier Course has been regulated as a regulation American Water Ski Association slalom water ski course. (<http://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/Public-Notice-View/Article/494196/pn14-29-severn-river-and-magothy-river-ski-clubwater-ski-coursebuoys-anne-arund/>.) It is a precious public recreational resource. Again, only the Maynadier course provides a safe space for the skiers to ski as it is more protected from boat wakes than the other two controlled ski course on the Severn. This safety issue is critical, because slalom skiing is a highly technical and dangerous sport. As the attached pictures show, the course does not take up the entire Creek and all Creek users may use the Creek while the skiers ski. (Exhibit 2). During this time, other boats may be rafted nearby or paddling nearby: the skiers, boaters, and other waterway users have all been on friendly

terms and have all used the waterway at the same time without incident. Waterskiing is also in harmony with the wildlife.

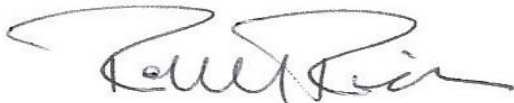
F. There Is Room For Everyone At Maynadier: Skiers Are Good Neighbors.

As Exhibit 1 shows, a very small number of landowners (approx. 12) have waterfront access. Exhibit 2 shows that Maynadier Creek is a large area that easily supports multiple concurrent uses: rafted boats, kayakers, crabbers, motor boats, and sailboats. There is room for everyone. We are friendly with the other boaters and they often sit and “judge” our water skiing. As the undisputed evidence shows, the specialized ski boats have a small wake, and the skiing does not disturb the wildlife. As Exhibit 3 shows, the blue heron frequently stands nearby, watching the skiing. As Exhibit 4 shows, it is import to have a safe place for our kids to ski.

CONCLUSION

SB 321 would improperly divest the DNR and the BAAC of their regulatory authority over Maynadier. This bill unfairly and unjustifiably favors a few landowner while discriminating against water skiers from around the State from using this public waterway. *I urge an unfavorable report from this Committee.*

Respectfully submitted,



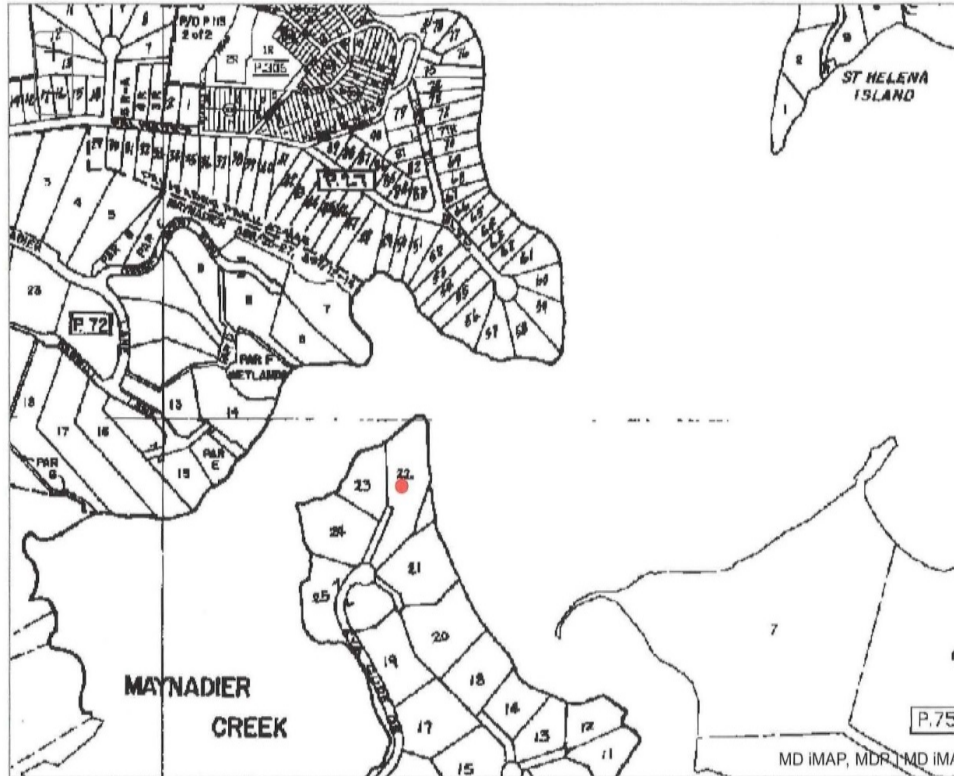
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EXHIBIT 1: Tax Map: Few Waterfront Properties in Maynadier Creek.

Anne Arundel County

New Search (<http://sdat.dat.maryland.gov/RealProperty>)

District: **02** Subdivision: **044** Account Number: **90023585**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

EXHIBIT 2: Pictures of Ski Course: Space for Everyone in Maynadier.



Exhibit 3: The Blue Heron Watches the Water skier.



Exhibit 4: Water Skier



**Exhibit 5: SB 93, as enacted
Chapter 747 (Contains the
Required DNR Study Provision)**

Chapter 747

(Senate Bill 93)

AN ACT concerning

**Anne Arundel County – Controlled Water Ski Area in Maynadier Creek –
Operation of Vessel – Hours of Operation**

FOR the purpose of authorizing a person to operate or give permission to operate a vessel for certain purposes in a slalom ski course located in a controlled water ski area in Maynadier Creek during certain times on certain days; prohibiting a person from operating or giving permission to operate a vessel for certain purposes in a slalom ski course located in a controlled water ski area in Maynadier Creek ~~between certain dates, on certain days and State holidays, or under other specified circumstances;~~ providing for the application of this Act; defining a certain term; requiring the Department of Natural Resources to report to the Governor and the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the operation of a vessel on a slalom ski course in a controlled water ski area.

BY renumbering

Article – Natural Resources
Section 8–725.1 through 8–725.7, respectively
to be Section 8–725.2 through 8–725.8, respectively
Annotated Code of Maryland
(2012 Replacement Volume and 2018 Supplement)

BY adding to

Article – Natural Resources
Section 8–725.1
Annotated Code of Maryland
(2012 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 8–725.1 through 8–725.7, respectively, of Article – Natural Resources of the Annotated Code of Maryland be renumbered to be Section(s) 8–725.2 through 8–725.8, respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Natural Resources

8–725.1.

(A) IN THIS SECTION, “CONTROLLED WATER SKI AREA” MEANS AN AREA THAT:

(1) IS MARKED BY THE DEPARTMENT;

(2) ENCOMPASSES A SLALOM SKI COURSE THAT IS PERMITTED BY THE U.S. ARMY CORPS OF ENGINEERS; AND

(3) IS DESIGNED, CONSTRUCTED, AND INTENDED FOR CONTROLLED WATER SKI PRACTICE.

(B) THIS SECTION APPLIES TO A CONTROLLED WATER SKI AREA LOCATED IN MAYNADIER CREEK.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON MAY OPERATE OR GIVE PERMISSION TO OPERATE A VESSEL FOR THE PURPOSE OF TOWING A WATER SKIER IN A SLALOM SKI COURSE LOCATED IN A CONTROLLED WATER SKI AREA ONLY ON:

(I) ~~MONDAYS, TUESDAYS, WEDNESDAYS, AND THURSDAYS BETWEEN NOON AND SUNSET~~ 8:00 A.M. AND 6:00 P.M.;

(II) TUESDAYS AND WEDNESDAYS BETWEEN 8:00 A.M. AND SUNSET;

(III) FRIDAYS BETWEEN 8:00 A.M. AND 4:00 P.M.; OR

(IV) SUNDAYS BETWEEN 8:00 A.M. AND NOON.

(2) A PERSON MAY NOT OPERATE OR GIVE PERMISSION TO OPERATE A VESSEL FOR THE PURPOSE OF TOWING A WATER SKIER IN A SLALOM SKI COURSE LOCATED IN A CONTROLLED WATER SKI AREA ON:

(I) ~~BETWEEN MARCH 15 AND JUNE 15 OF EACH YEAR;~~

~~(II) ON FRIDAYS, SATURDAYS, SUNDAYS, AND; OR~~

(II) STATE HOLIDAYS;

~~(III) AT A SPEED GREATER THAN 6 MILES PER HOUR WITHIN 100 FEET OF EACH END OF THE SLALOM SKI COURSE; OR~~

~~(IV) WHEN OTHER VESSELS OR PEOPLE IN THE WATER ARE;~~

- ~~1. ENTERING MAYNADIER CREEK;~~
- ~~2. EXITING MAYNADIER CREEK;~~
- ~~3. CROSSING THE CONTROLLED WATER SKI AREA; OR~~
- ~~4. WITHIN 50 FEET OF THE PERIMETER OF THE CONTROLLED WATER SKI AREA.~~

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 1, 2022, the Department of Natural Resources shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the implementation of this Act.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2019. It shall remain effective for a period of 4 years and, at the end of May 31, 2023, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 25, 2019.