

SB 945 Wetlands and Waterways Program - Authorizat

Uploaded by: Cait Kerr

Position: FAV



Protecting nature. Preserving life.

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Wednesday, March 16, 2022

TO: Paul Pinsky, Chair of Education, Health, and Environmental Affairs Committee and Committee Members
FROM: Michelle Dietz, The Nature Conservancy, Director of Government Relations; and Cait Kerr, The Nature Conservancy, Conservation & Climate Policy Analyst
POSITION: Support SB 945 Wetlands and Waterways Program - Authorizations for Ecological Restoration Projects

The Nature Conservancy (TNC) supports SB 945 offered by Senator Gallion. In Maryland, TNC's work focuses on delivering science-based, on-the-ground solutions that secure clean water and healthy living environments for our communities as well as increasing natural and community resilience in the face of a changing climate. We are dedicated to a future where people and nature thrive together.

In recent years, TNC has partnered with U.S. Fish and Wildlife Service, the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service, the Maryland Department of Natural Resources, the U.S. Geological Survey (USGS), the France-Merrick Foundation, and the National Fish and Wildlife Foundation to undertake one of the largest ecological restoration efforts in Maryland's history: the Pocomoke River Project. The Pocomoke floodplain restoration project's scale is massive; it encompasses roughly 4,000 acres of floodplain along 9-miles of the river. The project's goal is to restore the Pocomoke from historic ditching and channelization practices, which have caused increased flooding in downstream communities and increased nutrient and sediment runoff flowing into the Chesapeake Bay, contributing to dead zones.

During ditching and channeling, piles of dredged material along the river's edge created spoil banks that disconnected the river from the surrounding floodplains. The restoration project involved carving breaches into these spoil banks, testing methods for stabilizing breaches from erosion and planting native vegetation. TNC has also invested time into engaging landowners to help them identify a restoration plan that works for them, whether that is enrolling in a government program, placing an easement on their property, or entering into a private agreement with TNC. Working in collaboration with USGS and USDA scientists, we are also monitoring restoration benefits through placing devices that allow us to track flood reduction data as well as water quality improvements. The initial monitoring results show the floodplain reconnection project is providing the anticipated benefits. TNC has used what we've learned from this project to inform other ecosystem restoration work, including an eighty-acre wetland at Great Cypress Swamp in Delaware at the Pocomoke River's headwaters.

SB 945 seeks to establish a clear and intentional process for reviewing and evaluating applications for wetlands and waterways authorizations for ecological restoration projects. Currently, acquiring permits for restoration projects is a tedious process and requires extraneous justification for minor habitat impacts that are significantly benefiting other habitats. Separating gray infrastructure reviews from green infrastructure reviews will increase the feasibility of implementing restoration activities. These activities need to occur faster and more broadly given climate impacts' anticipated acceleration. The Pocomoke River Project provides evidence that ecological restoration mitigates climate impacts through building ecosystem resilience and improving water storage and filtration, which reduces downstream flooding in communities and improves water quality. With a more streamlined application process, TNC and our partners can accelerate these projects in order to deliver faster results across an even greater scale.

TNC commends Senator Gallion for sponsoring this legislation, which recognizes ecological restoration project's value and accelerates Maryland's process for implementing these projects in order to meet climate threats' growing urgency.

Therefore, we urge a favorable report on SB 945.

SB0945 Support Ltr.pdf

Uploaded by: Kevin Smith

Position: FAV



MARYLAND COASTAL BAYS PROGRAM

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March 15, 2022

Senator Paul G. Pinsky
Miller Senate Office Building, 2 West Wing
11 Bladen St.
Annapolis, MD 21401

Support for SB0945

Dear Chairman Pinsky and Members of the Committee,

The Maryland Coastal Bays Program thanks you for the opportunity to submit testimony in **Support of SB0945**. The Coastal Bays Program is a local watershed organization in Worcester County. Our mission is the protection, preservation and restoration of waters in the 5 coastal bays that make up our watershed. As part of our mission, we undertake many ecosystem restoration and enhancement projects within the watershed.

It has been our experience that implementing these projects within the existing State regulatory framework can be complex, time consuming and unnecessarily costly. While we understand that this work should not be exempt from regulatory review, we do believe that the process should be efficient. The regulatory review process and requirements presently used at the Maryland Department of the Environment were developed at a time when ecosystem restoration wasn't an established practice. The current regulations were established for the review of development projects like roads and other commercial and residential ventures. It was not established to review ecosystem restoration projects such as those undertaken by our organization and many other organizations which are working to improve water quality and habitat in Maryland.

A streamlined process for voluntary ecosystem restoration will improve the efficiency of these badly needed projects and will ultimately save the taxpayers money. It should be our objective to implement the most cost-effective and environmentally sound projects as possible. Thank you for the opportunity to provide comment and we are very appreciative of your committee's leadership in moving forward with the passage of SB0945.

Sincerely,

Kevin M. Smith, Executive Director
Maryland Coastal Bays Program

Citizens joining with local, state, and federal governments to develop common sense solutions
to the bays' most pressing environmental problems.

Chris Becraft - SB945 testimony.pdf

Uploaded by: Rory Murray

Position: FAV



SB945 – Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects

Testimony on Behalf of: Underwood and Associates

Position: Support

Underwood & Associates, Inc. is an Annapolis-based small business committed to combining the needs of a developing society with an adjusting environment by restoring native ecosystems through our regenerative philosophy. Underwood & Associates, Inc. is a trusted expert that has invented the Regenerative Stream Channel (RSC), Step Pool Storm Conveyance (SPSC), and dynamic living shoreline approaches that have been adopted by many local, state, and federal agencies across the Chesapeake Bay Watershed and around the world.

The environment is suffering, and we must promptly restore failing ecosystems before things worsen. The current permit process is very general and primarily set up to delay development. However, and unfortunately, as the restoration projects go through the same process as development projects, restoration projects are unnecessarily delayed. Restoration is clearly necessary to the long term health of the ecosystems in Maryland, and as such, these types of projects should have a separate, informed, and more focused, permit and review process.

1. We must define “ecological restoration” in the law. The state is spending millions of dollars on ecological restoration projects; however, there is still a lot of ambiguity about what the term means. Groups are operating in Maryland claiming to be conducting “ecological restoration” but are not. Some of these companies are doing significant damage to Maryland’s ecosystems at taxpayers’ expense because the term is not well defined.

2. A separate and distinct permit and review track should be developed for restoration projects. This should consist of an application that reflects the areas of scrutiny explicitly needed for ecological restoration projects and different review criteria tailored explicitly to restoration. The current application (attached) is a significant impediment to restoring Maryland’s ecosystems and needs an overhaul. The application and review should be well thought out, balanced, transparent and regimented so that all parties involved can be confident that appropriate projects are being conducted.

3. There must be a significant overhaul of all state statutes and regulations related to tidal and non-tidal wetland permitting to make the process more efficient, prevent projects that are unfit for the ecosystem, and solve conflicts between the various bodies of law and regulations. The Department must have the ability to permit restoration projects that are determined to be best for the holistic restoration of the ecosystem. They currently do not, which has lead to unwanted outcomes.

I appreciate the engagement the discussions with various stakeholders and MDE during this process and look forward to making continued progress.

Chris Becraft - Partner, Underwood, and Associates.

Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or NonTidal Wetland in Maryland.

**Instructions for the
JOINT FEDERAL/STATE APPLICATION FOR THE ALTERATION OF ANY
FLOODPLAIN, WATERWAY, TIDAL OR NONTIDAL WETLAND IN MARYLAND**

Please refer to the following question, located on the application under (2) Project Description, (a) Give written description of project:

Will there be temporary or permanent tree clearing occurring on the overall project site (i.e., uplands and wetlands), including but not limited to, tree clearing for site development, road/highways, utilities, mining, stormwater management, restoration, energy production and transmission, etc.? _____ Yes _____ No
If yes, total estimated acres of tree clearing for the overall project site:
_____ acres

Instructions: Please indicate "Yes" or "No" if temporary or permanent tree clearing is proposed on the overall project site (i.e., uplands and wetlands). Tree clearing may be proposed as part of the overall project construction activities, including but not limited to site development, construction of roads or highways, stormwater management facilities and best management practices, aquatic resource restoration and enhancement, energy production

Instructions-Page 1

Tree transition, which often occurs in restoration projects, is different than tree loss. Restoration projects change ecosystems from degraded to functioning. Often times, the means that the trees transition from upland trees to forested wetlands. This application has no consideration for tree transition.



activities and installation of utilities. If you checked "Yes" that permanent or temporary tree clearing is proposed as part of the overall project scope, please fill in the blank and identify the total estimated acres of tree clearing for the overall project site, including upland and wetland areas. If you need further clarification, please contact the Army Corps of Engineers at 410-962-3670.

Effective January 2021, *new* questions below have been added to the application.

i. Pile Driving for Category A Activities: For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 150 db re 1 μ Pa RMS or 206 db peak re 1 μ PA and must meet one of the following conditions:

- (1) Plastic or concrete piles must be less than 12 inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
- (2) Timber piles must be 10 inches or less when a vibratory hammer is utilized for installation.
- (3) Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
- (4) Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
- (5) Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
- (6) Piles of any size/type with any hammer method must be installed between November 30 and March 15.

(Note: Any pile driving activity that does not meet one of the conditions above must be reviewed by the Corps as a Category B activity or an alternate Corps permit review process, as appropriate.

ii. Pile Driving for Category A and Category B Activities: For Category A and Category B activities, pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20 minute period to allow for fish and other wildlife to leave the area.

Pile driving is not applicable in ecosystem restoration permitting.

Sample Plans and Checklists

Sample Plans and Checklists are provided at the end of this document. Please refer to the sample plans, as appropriate. Please include the information shown on the sample plan on your proposed plan.

Clearly show locations of impacts, on the plans.

Itemize each impact site with area of wetland or buffer impact, linear feet of stream and area of stream, cubic yards of floodplain disturbance.

Indicate whether the impact is temporary or permanent.

Permanent Impacts: Permanent impacts are those that result in a change to a wetland, wetland buffer, water, or floodplain that will not be reversed or removed.

Temporary impacts: Temporary impacts are those that are of short duration, and after the activity is completed, result in a restoration of the disturbed wetland, water, wetland buffer, or floodplain to its previous condition.

There is no discretion as to what is "permanent," and no consideration that permanence, to restore an ecosystem, is a positive.

Is it a permanent impact to reintroduce water to a wetland that has degraded over time?

2. PROJECT DESCRIPTION

a. GIVE WRITTEN DESCRIPTION OF PROJECT:

Has any portion of the project been completed? Yes No If Yes, explain: _____

Is this a residential subdivision or commercial development? Yes No _____ acres
 If yes, yes, total number of acres on property _____

Will there be temporary or permanent tree clearing occurring on the overall project site (i.e., uplands and wetlands), including but not limited to, tree clearing for site development, road/highways, utilities, mining, stormwater management, restoration, energy production and transmission, etc.)? Yes No

If yes, total estimated acres of tree clearing for the overall project site: _____ acres

b. ACTIVITY: Check all activities that are proposed in the wetland, waterway, floodplain, and nontidal wetland buffer as appropriate.

- A. filling
- B. dredging
- C. excavating
- D. flooding or impounding water
- E. draining
- F. grading
- G. removing or destroying vegetation
- H. building structures

Area for item(s) checked: Wetland _____ (sq. ft.) Buffer (Nontidal Wetland Only) _____ (sq. ft.)
 Expanded Buffer (Nontidal Wetland Only) _____ (sq. ft.)

Area of stream impact _____ (sq. ft.)
 Length of stream affected _____ (linear feet)

c. TYPE OF PROJECTS: Project Dimensions

For each activity, give overall length and width (in feet), in columns 1 and 2. For multiple activities, give total area of disturbance in square feet in column 3. For activities in tidal waters, give maximum distance channelward (in feet) in column 4. For dam or small ponds, give average depth (in feet) for the completed project in column 5. Give the volume of fill or dredged material in column 6.

	Length (ft.) 1	Width (ft.) 2	Area (Sq. Ft.) 3	Maximum/Average Channelward Encroachment 4	Pond Depth 5	Volume of fill/dredge material (cubic yards) below MHW or OHW 6
A. <input type="checkbox"/> Bulkhead						
B. <input type="checkbox"/> Revetment						
C. <input type="checkbox"/> Vegetative Stabilization						
D. <input type="checkbox"/> Gabions						
E. <input type="checkbox"/> Groins						
F. <input type="checkbox"/> Jetties						
G. <input type="checkbox"/> Boat Ramp						
H. <input type="checkbox"/> Pier						
I. <input type="checkbox"/> Breakwater						
J. <input type="checkbox"/> Repair & Maintenance						
K. <input type="checkbox"/> Road Crossing						
L. <input type="checkbox"/> Utility Line						
M. <input type="checkbox"/> Outfall Construction						
N. <input type="checkbox"/> Small Pond						
O. <input type="checkbox"/> Dam						
P. <input type="checkbox"/> Lot Fill						
Q. <input type="checkbox"/> Building Structures						
R. <input type="checkbox"/> Culvert						
S. <input type="checkbox"/> Bridge						
T. <input type="checkbox"/> Stream Channelization						
U. <input type="checkbox"/> Parking Area						
V. <input type="checkbox"/> Dredging						

1. New 2. Maintenance 3. Hydraulic 4. Mechanical
 W. Other (explain) _____

Ecological Restoration is not an option.

Ecosystem restoration techniques should be listed.

The terms "restored" and "enhanced" should be available

Ecological restoration isn't even listed as a type of project. The state and local governments spend hundreds of millions of dollars on these projects that are vitally important; however, from the very beginning of the process, they are an afterthought.

b. **ACTIVITY LOCATION:** Check one or more of the following as appropriate for the type of wetland/waterway where you are proposing an activity:

- | | | |
|--|---|--|
| A. <input type="checkbox"/> Tidal Waters | F. <input type="checkbox"/> 100-foot buffer (nontidal wetland of special State concern) | H. <input type="checkbox"/> 100-year floodplain (outside stream channel) |
| B. <input type="checkbox"/> Tidal Wetlands | G. <input type="checkbox"/> In stream channel | I. <input type="checkbox"/> River, lake, pond |
| C. <input type="checkbox"/> Special Aquatic Site (e.g., mudflat, vegetated shallows) | 1. <input type="checkbox"/> Tidal 2. <input type="checkbox"/> Nontidal | J. <input type="checkbox"/> Other (Explain) |
| D. <input type="checkbox"/> Nontidal Wetland | | |
| E. <input type="checkbox"/> 25-foot buffer (nontidal wetlands only) | | |

Ecological restoration projects typically have the check every one of these boxes. The reason is because a resilient project will restore each of areas. We are restoring these resources, not impacting them. However, every box checked means more conflicting statutes and regulations to navigate (which we can guess is not the intent).

THE FOLLOWING INFORMATION IS REQUIRED BY THE STATE (blocks 4-7):

4. REDUCTION OF IMPACTS: Explain measures taken or considered to avoid or minimize wetland losses in F. Also check Items A-E if any of these apply to your project.

- | | | | |
|---|---|--|--|
| A. <input type="checkbox"/> Reduced the area of disturbance | B. <input type="checkbox"/> Reduced size/scope of project | C. <input type="checkbox"/> Relocated structures | D. <input type="checkbox"/> Redesigned project |
| E. <input type="checkbox"/> Other _____ | | | |
| F. Explanation _____ | | | |

Describe reasons why impacts were not avoided or reduced in Q. Also check Items G-P that apply to your project.

- | | | |
|--|---|---|
| G. <input type="checkbox"/> Cost | K. <input type="checkbox"/> Parcel size | N. <input type="checkbox"/> Safety/public welfare issue |
| H. <input type="checkbox"/> Extensive wetlands on site | L. <input type="checkbox"/> Other regulatory requirement | O. <input type="checkbox"/> Inadequate zoning |
| I. <input type="checkbox"/> Engineering/design constraints | M. <input type="checkbox"/> Failure to accomplish project purpose | P. <input type="checkbox"/> Other |
| J. <input type="checkbox"/> Other natural features | | |
| Q. Description _____ | | |

Once again, the questions “what is an impact,” and “are all impacts bad” become issues. Under current MDE regs and statute, introducing water to a floodplain is an “impact,” and impacts are presumed to be negative. However, the science says that a floodplain must continuously have water added to it to function. This is a major issue.

There is no “ecological restoration” option available under the current law, or this permit, to explain why impacts are not being avoided or reduced. This oversight leads to projects that are designed to fit permit parameters, not the needs of the ecosystem.

6. ALTERNATIVE SITE ANALYSIS: Explain why other sites that were considered for this project were rejected in M. Also check any items in D-L if they apply to your project. **(If you are applying for a letter of authorization, do not complete this block.)**

- A. 1 site B. 2 - 4 sites C. 5 or more sites

Alternative sites were rejected/not considered for the following reason(s):

- | | | |
|---|--|-----------------------------------|
| D. <input type="checkbox"/> Cost | H. <input type="checkbox"/> Greater wetlands impact | L. <input type="checkbox"/> Other |
| E. <input type="checkbox"/> Lack of availability | I. <input type="checkbox"/> Water dependency | |
| F. <input type="checkbox"/> Failure to meet project purpose | J. <input type="checkbox"/> Inadequate zoning | |
| G. <input type="checkbox"/> Located outside general/market area | K. <input type="checkbox"/> Engineering/design constraints | |

M. Explanation:

7. PUBLIC NEED: Describe the public need or benefits that the project will provide in F. Also check Items in A-E that apply to your project. **(If you are applying for a letter of exemption, do not complete this block.)**

- | | | |
|--------------------------------------|--|---|
| A. <input type="checkbox"/> Economic | C. <input type="checkbox"/> Health/welfare | E. <input type="checkbox"/> Other <input style="width: 50px;" type="text"/> |
| B. <input type="checkbox"/> Safety | D. <input type="checkbox"/> Does not provide public benefits | <input style="width: 150px; height: 15px;" type="text"/> |

F. Description

This section has absolutely nothing to do with restoration, but still must be completed. Ecological restoration projects are chosen for specific areas that have failing ecosystems. This is not a development plan. There is no alternative site.

TMDL, carbon reduction and 2014 Chesapeake Bay Watershed Agreement goals are all public benefits that should be listed.

B. FEDERALLY AUTHORIZED CIVIL WORKS PROJECTS: Does the project require permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers' federally authorized civil works project, structure, property, or easement (e.g., federal navigation channel, flood control levees, dams and reservoirs, lake property, etc.)?

Yes No

If yes, have you submitted a written request for Section 408 permission from the Corps district having jurisdiction over that project (i.e., Baltimore district in Maryland or Philadelphia district in C & D canal)? Yes No

This is a "Joint Federal/State Application" but still requires that a separate application be submitted to the Army Corps of Engineers. What part of this is "joint?"

SUPPLEMENTAL INFORMATION TO BE INCLUDED ON PLANS, DRAWINGS, OR VICINITY MAPS

In addition to the information indicated on the previous pages, you should include the following on the 8 1/2 x 11 site plans and any blueprints you have submitted:

1. Delineation of any wetland buffers or expanded buffers, clearly marked and differentiated.
2. Location of mitigation area, if proposed on the same site as the project.

Note: If you are proposing a complex project you may wish to submit engineering blueprints of your project with the application form to expedite review.

Mitigation Location Map: If you are proposing that nontidal wetland mitigation be done at a different location than the proposed project, you should submit a map showing the location of the mitigation site in relation to the proposed nontidal wetland losses.

DELINEATION OF WETLANDS, OTHER SPECIAL AQUATIC SITES, AND OTHER WATERS

Applications must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and streams on the project site. Wetland delineations must be prepared in accordance with the current wetland delineation manual and appropriate regional supplement published by the Corps. Wetlands must be shown on all plans submitted with the application. All wetlands on site must be delineated and shown on the overall site plan. 8½ x 11 inch plans with topography showing relation of the wetlands and project impacts must be submitted. Copies of the wetland reports and data sheets used in making the determination must be included with your application submittal.



Ecological restoration projects should not have a "mitigation area."

SB0945 Support-SRK.pdf

Uploaded by: Sara Caldes

Position: FAV



The Severn RIVERKEEPER® Program

P.O. Box 6593 • Annapolis, MD 21401 • phone: (410) 849-2329 • www.severnriverkeeper.org

March 14, 2022

Chairman Paul G. Pinsky
Education, Health and Environmental Affairs Committee
2 West
Miller Senate Office Building
Annapolis, MD 21401

SB0945 – Wetlands and Waterways Program – Authorizations for Ecological Restoration Project
Testimony on Behalf of: The Severn Riverkeeper Program
Position: Support

The Severn Riverkeeper Program is an active environmental non-profit dedicated to conservation, wetland preservation and restoration in the Severn River Watershed. Our goal is to create fishable and swimmable waters and a resilient and sustainable watershed. Our focus is to stop pollution. The Severn's water quality has deteriorated significantly due to stormwater runoff and hardening shorelines. The solution is to work in the ravines and stream valleys to restore the riparian ecosystems and create nature-based restoration projects that process and filter the sediment and excess nutrients before entering tidewater. We also work at the shoreline to stop erosion by creating dynamic living shorelines that create habitat and stabilize. Our goal is to Save the Severn, "One Creek at a Time".

In the 20 years since our founding, we have completed 11 major voluntary restoration projects with several others currently in design and permitting. We have leveraged over \$6 million of investment in restoration. Many of those projects have won awards and helped set the standard for regenerative nature-based approaches that replace lost ecosystem functions of the streams and adjacent floodplains and wetlands.

Positive trend for funding restoration: Initially it was difficult to identify funding sufficient to build projects at the scale necessary to stop pollution. However, over the last few years that has improved and the State of Maryland and the local jurisdictions such as Anne Arundel County have stepped up their support of restoration projects by non-profits. We have been able to create viable partnerships to improve the environment and reduce TMDL's.

Downward trend for Design and Permitting Restoration: The trend for design and permitting has been the opposite, however. The cost and timeline for obtaining permits for restoration has increased over the past 20 years. The State process for obtaining permits is daunting and does not differentiate between voluntary restoration and mitigation/development whose goals and motivations are very different. This creates a regulatory culture that is often more inclined to pound the "developer" of a voluntary restoration with a punitive mindset instead of creating a partnership to increase the benefits of restoration for the resource – partner or adversary? This raises the following concerns:

- The process is inefficient and compartmentalized among the various resources within a larger stream and riparian ecosystem. Each area has its own reviewers who are narrowly focused on that specific resource. This can create the scenario that we are forced to protect a degraded wetland in its current state at the expense of creating ecological uplift for the entire stream system. In one extreme example, our organization was forced to give back nearly \$1 million dollars that we had secured for a stream restoration due to this exact issue. It created such a permit impasse, that we had to abandon the project, unable to pay for the level of impact studies being demanded by the reviewers.

- This creates a tendency to design to the permit and “regression toward the mean” so that we get less resilient projects, less pollution processing and less long-term ecosystem re-establishment – ironically, all in the name of Clean Water.
- It’s all about science and ecosystem balance. The science is evolving as we come to understand more about how to work with the natural processes, reconnect floodplains, re-establish groundwater exchange and create long-term resilient ecosystems. This calls for reviewers who operate within a “restoration” mindset.
- This is a multi-tiered issue, involving regulatory review at not only the State level, but also the Federal and Local levels. The State of Maryland has the opportunity here to set the bar for regulatory consistency and science that meets the goals of the Chesapeake Bay Watershed Agreement. I support the effort to conduct a thorough review of the regulations that govern these vital restoration projects and would welcome participation in such an effort. Local jurisdictions look to the State to set the tone for rigorous yet appropriate and efficient review for proposed restoration and this can create better projects moving forward.

I appreciate the opportunity to comment on this proposed bill and very much appreciate the leadership within the State that has shown that they value restoration and the goals of the Chesapeake Bay Agreement.

Sara Caldes – Severn Riverkeeper



SB 945_CBF SWA.pdf

Uploaded by: Doug Myers

Position: FWA



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Senate Bill 945

Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects

Date: March 16, 2022

Position: Support with Amendments

To: Education, Health, and Environmental Affairs Committee From: Doug Myers, Maryland Senior Scientist

Chesapeake Bay Foundation (CBF) **SUPPORTS SB 945 WITH AMENDMENTS**. This bill establishes a separate evaluation and review process within the Department of Environment for Ecological Restoration Projects than what currently exists for development projects.

The new procedure would compare functions of the existing wetland or waterway to the proposed restored state, however that restored state does not express itself on the landscape instantaneously. CBF appreciates this legislation as the current review procedures often devalue the existing functions of a stream. Current project review lacks sufficient baseline data collection to establish current values and opportunities for restoration including fish and wildlife habitat, water quality, and carbon sequestration capacity.

Many stream restoration projects fail to consider the appropriateness and viability of a site for restoration. Site variable such as growth in impervious surfaces can completely negate the ability of a restoration project downstream to function. There is also often a substantial lag time between the restoration intervention and acquisition of the desired restored state which is often not accounted for in permit review processes. Any new procedure should amortize benefits across a scientifically determined lag time based on monitoring of similar projects in the past. An improved review process could address these shortcomings.

Without amendments addressing the gaps cited above, the legislation's expedited review process poses concerns. CBF questions the basis of stream restoration projects performed towards the scientifically undefined term "ecological uplift," and calls for nutrient reductions to be a qualifier for these projects. The bill's concern for ensuring state funding is used most effectively and efficiently in implementing the Chesapeake Bay TMDL and Chesapeake Bay Agreement should be focused on that objective. A poorly sited project, or poorly designed project may require repeated maintenance expenditures. Additionally, to ensure any new process is responsive to environmental concerns, that process should be a formal rulemaking that allows stakeholders to raise concerns.

CBF urges the Committee's FAVORABLE WITH AMENDMENTS report on SB 945. For more information, please contact Robin Clark, Maryland Staff Attorney at rclark@cbf.org and 443.995.8753.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403
Phone (410) 268-8816 • Fax (410) 280-3513

SB 945_CWRP_Testimony_FWA.pdf

Uploaded by: Isaac Meyer

Position: FWA

Chesapeake Watershed Restoration Professionals

Senate Bill 945 Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects FAVORABLE WITH AMENDMENTS

March 16, 2022

Hon. Paul Pinsky
Chairman, Education, Health and Environmental Affairs
2 West
Miller Senate Office Building
Annapolis, Maryland 21401

Chairman Pinsky, Vice-Chair Kagan and members of the Committee,

The Chesapeake Watershed Restoration Professionals (CWRP) supports Senate Bill 945 in concept but has significant concerns with the potential application of the legislation, if passed, and strongly encourages the General Assembly to study the ecological restoration application process as is being considered in the Environment and Transportation Committee. CWRP was founded in November of 2020 and represents Maryland professionals whose daily work improves the health of Maryland's waters and our prized Chesapeake Bay.

We understand there are ongoing amendments to the legislation being contemplated, including studying the application process. As written, Senate Bill 945 would require the Maryland Department of the Environment (MDE) to establish a process for reviewing and evaluating applications for wetlands and waterways authorizations for ecological restoration projects that differs from development projects. Additionally, the legislation would authorize MDE to waive requirements to minimize alteration, impairment, or disturbance of a wetland or waterway.

CWRP has significant concerns granting an agency with the authority to wave existing laws and regulations as it relates to protecting the environment. Unintended consequences could be negative and significant and not worth the risk just to potentially permit some specific projects that otherwise wouldn't be. While we support the objectives of the legislation and believe permitting of ecological restoration projects can and should be streamlined, we think the appropriate process should be a study by the Maryland Department of the Environment that makes recommendations to the Maryland General Assembly.

We encourage the study to examine the following areas:

- **The efficiency and effectiveness of the current joint application permit and permit review process including the US Army Corps of Engineers review and approval under Section 404 of the Clean Water Act**
- **Inefficiencies or duplicative efforts for separately permitting the same actions at the County or local level compared to similar projects in adjoining states**
- **Assessment of how to achieve greater coordination and efficiency across all levels of required permitting**
- **Make recommendations for efficiencies among the state, federal, and local permitting processes including increased communication, rulemaking, or issuance of guidance to unify or to better align the entire process (i.e. eliminating duplicative processes)**

We thank the committee for their consideration of this important legislation and the issues we have raised. We look forward to working with you in the coming years to strengthen Maryland's ecological restoration laws.

Sincerely,

Liam O'Meara
President
Chesapeake Watershed Restoration Professionals

SB945_MDSierraClub_Info 16Mar2022.pdf

Uploaded by: Josh Tulkin

Position: INFO



P.O. Box 278
Riverdale, MD 20738

Committee: Education, Health, and Environmental Matters

Testimony on: SB 945 “Wetlands and Waterways – Authorizations for Ecological Restoration Projects”

Position: Informational

Hearing Date: March 16, 2022

The Maryland Chapter of the Sierra Club is providing this informational testimony on SB945 “Wetlands and Waterways – Authorizations for Ecological Restoration Projects” because of the importance of planning and executing these projects well and our concerns that past efforts have been uneven. The amended bill seeks to set up a study to make recommendations to accelerate the permitting process for “ecological restorations” of wetlands and waterways.

Although the bill attempts to forego permitting barriers to using a watershed approach, the Sierra Club believes that there is a history of using the banner of "stream restoration" to fund projects with limited oversight and measurable ecological criteria. Some projects are great, but others are extremely harmful. As an example, the Chapter and other groups have raised concerns about the Lake Elkhorn project in Columbia, Maryland due to its environmental impacts.¹ Therefore, any legislation, even for a study, requires scrutiny and clearly indicated outcome measures due to unwarranted risks of environmental degradation.

The Sierra Club agrees that we need a formal review process and criteria. We do not recommend the promotion of engineered restoration construction projects over less destructive techniques for mitigating environmental damage and the causes of stormwater runoff. This is not in the interest of the people of our state. According to EPA guidelines², the Clean Water Act specifies that avoidance should be the first action pursued because it is the least damaging project type. Any bill should support these recommendations.

This is a time of significant climate change, and efforts are underway by the State of Maryland in planning and implementation to improve the resiliency and sustainability of the environment and natural resources of the State. Nothing should be implemented that will undermine these goals and efforts. HB 869 has the potential to impede our state’s efforts to respond to the impacts of climate change and its effects on our natural resources if it leads to fast tracking less than optimal projects.

¹ <https://www.sierraclub.org/maryland/protect-our-maryland-streams>

² Environmental Protection Agency. March 2021. [Types of Mitigation under CWA Section 404: Avoidance, Minimization and Compensatory Mitigation.](#)

Our comments on and recommendations for the bill text are as follows:

1. A definition of ecological restoration projects is needed in the bill text. It is critical to differentiate projects that take a watershed approach, value biologic improvement, and include all areas impacted by the project footprint, including riparian or flood plain areas, from projects that meet the review criteria but do not include these protective actions.
2. Best available science for the permitting process should include stream morphology, geology, biology, hydrology, ecology, watershed management, and impacts on wildlife corridors, and should include reputable evaluations found in systematic reviews and meta-analyses of the literature or the best level of evidence available.
3. The updating process should be transparent to the public and include comprehensive and socially equitable public input. The process should not short-circuit public oversight. Developing appropriate guidelines will help ensure timely actions.
4. Ecological projects should not be reviewed by people with expertise only in restoration projects. Reviewers should have deep expertise in the ecology of wetlands, waterways, and riparian habitats, as well as the total environmental impact of construction projects, including an understanding of lost ecosystem services and other environmental impacts.
5. It is critical that the review criteria are not tailored to restoration projects. Our suggested wording is “Establish review criteria that are specifically tailored to protecting critically needed environmental services provided by the wetlands, waterways, and riparian areas impacted by the proposal.” Outcomes of a study, including decisions such as whether accelerated permitting will be established, should not be specified in the setup of the study.
6. Sustaining and improving environmental protection should be included as one of the objectives of any reforms to the permitting process, so that the study does not simply focus on accelerating processes that are currently uneven in quality. The timetable for permitting should not take priority over environmental protection.

In summary, the study bill should clearly define the terms used and assumptions about goals of the study and ensure high quality permit review and project execution processes. Overly-relaxed permitting could threaten intact stream valleys and wetlands which are essential to sustaining our state’s wildlife and ecosystems and to mitigating stormwater runoff and rising sea levels.

Thank you for the opportunity to provide this information and these recommendations.

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Uploaded by: Tyler Abbott

Position: INFO



March 16, 2022

The Honorable Paul Pinsky, Chair
Senate Education, Health, and Environmental Affairs Committee
Miller Senate Office Building, 2W
Annapolis, Maryland 21401

Re: Senate Bill 945 – Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed SB 945, *Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects*, and would like to share some information regarding this legislation. The Department also wanted to note that we are currently working with the sponsor to amend the language of the bill.

SB 945 directs MDE to create a new regulatory program for “ecological restoration projects” and proposes to insert this language in Title 5 of the Environment Article immediately following the Wetlands and Waterways Program statute. Additionally, SB 945 intends for this regulatory program to be “separate and distinct” from the wetlands and waterways authorization process and requires applications filed pursuant to this program to be reviewed by individuals with “expertise in ecological restoration.” SB 945 further requires MDE to establish review criteria tailored to restoration, to prioritize ecosystem restoration over wetland restoration, and to waive any requirement to minimize impacts to wetlands and waterways when appropriate. Lastly, SB 945 requires MDE to establish the program on or before October 1, 2023.

Maryland’s wetlands and waterways are governed by a complex and wide-ranging statutory and regulatory framework containing specific parameters for MDE that is consistent with federal requirements. MDE has implemented measures to expedite the review of restoration applications, including the assignment of dedicated reviewers, commitment to shortened review times, staff availability for pre-application meetings to discuss specific restoration proposals and site conditions, and issuance of new guidance that assesses resource tradeoffs while allowing for design flexibility in more degraded areas. This new guidance should result in cost savings and more efficient reviews without additional cost to MDE for more staff and resources.

However, MDE acknowledges that the existing statutory and regulatory framework separating waterways and wetlands (the regulatory distinctions being waterway construction, nontidal wetlands, and tidal wetlands) is not reflected in nature, where the functioning of each of these types of waters is intertwined with the functioning of adjacent other types of waters to reflect the integrity of an ecological system at a particular location. Current regulations do not work well for the permitting of those projects whose purpose and design is intended to holistically restore an ecological system in a particular location to a less disturbed condition, given the surrounding watershed and landscape. While MDE cannot support completely waiving the minimization of impairment or disturbance to functioning natural or water resources in favor of a single project’s viability, the understanding of natural systems and their interrelatedness has progressed since the

current regulatory framework was adopted. For these reasons, MDE would support future legislative changes which better incorporate this understanding, as it is likely to result in better projects with increased overall ecological uplift as well as economic benefits where efficiencies can be made in the process. It is important that any legislation proposed to achieve this goal be based on sound data and proven techniques, and should likely favor expediting projects located in areas with well-documented degradation as this will provide for efficient and effective use of state funds to achieve Chesapeake Bay restoration goals. Updating the statutory and regulatory framework would also allow MDE to incorporate policy elements not previously identified in the review process, such as considering a project's climate change implications and taking into account a project's environmental justice considerations to allow for restoring historically overlooked resources.

Significant changes to the established regulatory framework must allow for input from all interested parties, including the Department and those who currently advocate for less intervention in natural areas in the name of restoration. The goal of a "restored ecosystem" will need to be deliberated and defined so that results are easy to determine. A comprehensive workgroup is advisable so that future legislation can effectively provide a complete, scientifically supported and implementable solution.

Thank you for considering the Department's information regarding this legislation. We will continue to monitor SB 945 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.
Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal line extending to the left.

Tyler Abbott

cc: The Honorable Jason Gallion
Lee Currey, Director, Water and Science Administration