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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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