



February 25, 2022

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

Re: House Bill 869 – Wetlands and Waterways Program – Authorizations for Ecological Restoration Projects

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 869, *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.

HB 869 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, HB 869 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.” HB 869 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, HB 869 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 HB 869 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 Jim Gilchrist
Lee Currey, Director, Water and Science Administration