

Testimony in support of House Bill 942

Wetlands and Waterways Program - Authorizations for Stream Restoration Projects

This statement is on behalf of Protect Our Streams (PrOS), a community group started in 2019 in response to a proposed stream restoration project in Columbia, Maryland, in support of House Bill 942. In the past 16 months, our community group has communicated with over 800 Maryland residents educating them about the real world environmental and community impacts of these invasive projects. Our self-education about in-stream engineering projects leads us to support increased oversight and regulation for these projects across the state. Dozens of projects are planned in our communities and open spaces that will significantly affect Columbia, Howard County, and the state's few remaining forests, streams, and riparian buffer zones. A single project in Columbia will affect over 10,000 residents.

A private corporation headquartered in Ohio is proposing a project that would fundamentally change the community's green spaces, specifically our stream systems and has asked for a statewide funding instrument that would allow them to propose projects like this across the state with a funding mechanism already in place. These projects provide exclusive benefits to private corporations and to future developers who have a need for credits to offset tree removal or other negative environment impacts on their own projects at the expense of current and future generations of residents, native wildlife and our environment.

The stream construction project will use the most invasive and destructive methodology available to address a hypothetical problem. In addition, the proposed project is not guaranteed to improve or even address the issues they have identified. In fact, proposed projects do not have to deliver on their promises for the companies to benefit financially from the destruction of our semi-wild, forested, areas since they often request an advanced release of credits, rather than waiting for the full monitoring period of 10 years.

The stream and land affected in a single project proposed in Howard County and Columbia covers 33,000 linear feet of streams (including forested buffers), and 133 acres of Open Space land. This proposed channel-engineering and construction project (called stream restoration) uses invasive and scientifically controversial methods in the streambed and along the woodland banks. These projects are unproven experiments in corporate development. The creation of a Mitigation Bank Instrument means that a future developer can avoid being environmentally responsible and use the credits instead. The current approval process that approved a funding instrument before the full plans for the project are approved incentivizes companies to act and denies the public the opportunity to fully review and understand the process.

The project in my community is opposed by the Chesapeake Bay Foundation, Sierra Club, Maryland Native Plant Society, Maryland Ornithological Society, U.S. Fish and Wildlife agency, Patuxent Riverkeeper. State and federal regulatory bodies, Maryland Department of Environment, Maryland Department of Natural Resources and Army Corps of Engineers have

identified serious flaws with the plan. HB 942 would strengthen the state and the community's ability to ensure that only valid, well-researched, and needed projects are proposed and approved.

The reasons given for the projects I have reviewed and comments on in 2021 and 2022 in 3 counties across the state do not take into account greater watershed issues, nor do they address the sources of upland storm water management, which is a large part of the stated problem. This failure means that two other factors are unlikely to be successful: functional uplift, and self-maintenance. This project will not raise the ecological value of the waterway and land, and may, in fact, degrade it. This project, like others of its type, is not self-maintaining. These are serious issues that are important for the community and the larger public, as they create higher risks for project failure. The public deserves to provide direct and impactful input on these projects and we urge you to pass this bill and to support the creation of transparent and accountable processes for the communities affected.

These projects drastically change the natural areas and established ecosystems of the watershed. Bulldozers and other heavy construction equipment, construction materials staging areas, construction vehicles, and earth movers will remove and/or damage large areas of trees, topsoil, plant life, and wildlife habitat along the stream bank on each side of the stream, and within the streambed. Human activity will be disrupted along bike paths and in open spaces during construction, Maryland residents who live nearby and whose homes may be as close as 20 feet from the construction zone will be impacted on a daily basis without the usual protections for a construction project, and wildlife activity will be interrupted and deleteriously affected, some for the long term, even permanently, due to the invasive nature of the construction taking place. The wooded trails we walk every day, and the backyards we enjoy will be noticeably changed, with greatly diminished forest areas, trees, birds, animals, and shade, for decades, if not forever. This bill helps ensure that developers and communities don't choose the cheapest most-destructive choice, but instead are required to present a truer and more accurate picture of the drawbacks, threats, and long-term impacts to stream restorations.

Current permitting allows the companies incredible power to define what biological uplift is, to ignore criticisms from subject matter experts including the Chesapeake Bay Foundation and the agencies responsible for Interagency Review, and incentivize in-stream construction along every inch of stream to receive credits even if parts of the stream are stable and healthy. The invasive process of stream engineering involved in stream restoration that includes heavy equipment, removal of soil to be replaced by foreign riprap and soils, pose direct threats to threatened and endangered species (flora and fauna), open these spaces to increased threats from invasive species, and threaten those trees left behind. The removal of tree cover actually increases warming of the stream and the community, completely counter to any efforts for environmental improvement.

Additionally there are no regulations for when a vendor/bank sponsor attempts to subvert the permitting/regulatory process by proposing more than one Umbrella mitigation bank instrument as happened in 2021-2022. Vendors are targeting the few areas left in suburban/urban

Maryland that have been left untouched for 10 - 50 years, the last bastions of migratory songbird populations, with incredibly diverse wildlife, hundred year old beech trees, and established ecosystems that have adapted to and grown since houses were built. These areas should be protected, not advertised and incentivized for takeover and construction.

We were told repeatedly that there was no point in commenting on the project proposed in our area or even opposing it since there was no plan: the fact that this process could go so far without a plan is not something the vendor should have been proud of or that the permitting/regulatory agencies should have allowed. As House Bill 942 secures: a community cannot know, and the regulatory agencies should not approve any project or funding for a project without detailed, researched, and well-documented plans clearly identifying the areas of impact, the trees and other fauna to be removed or threatened, the actual health of the stream and the reason it was selected for a stream restoration rather than a different TMDL or MS4 permit project type, and the long-term stream and community impacts.

Projects begin with a Mitigation Bank, a private, commercial financial Instrument, that underwrites the project costs by creating monetized credits to be sold to developers, governments, and others, who may cause, have caused, or expect to cause, environmental damage elsewhere in the State, then sells these credits on a financial market. The financial incentives for this, and similar projects, provides a strong profit motive apart from stated environmental ones. The Howard County and Maryland community is entitled to transparency on the creation of any project for Mitigation Bank credits. The community taxpayer/residents must have full disclosure concerning the financial aspects of these projects, including potential conflicts of interest of those responsible for granting easements on community land, as well as future plans for use of the credits. These projects raise the question "Are our streams for sale?" and why does a company outside of Maryland benefit when Maryland residents will suffer from decades of environmental degradation.

Bank sponsors have taken advantage of the regulatory process/permitting process by developing small and large scale projects with single or minimal landowners, in fact, a project proposed in Maryland used land owned by the parent corporation proposing the project. It is essential that these efforts to stack the deck on behalf of corporations at the expense of the larger community must be stopped. Our community group gathered more signatures on a petition opposed to a stream restoration project in 2 weeks than the vendor/bank sponsor was required to get by law. Bank sponsors have no incentive, and are encouraged to avoid providing valid, truthful information to communities where they propose the projects. Increasingly, to ensure the profits available in the Mitigation Bank Instrument market, companies are identifying private lands on which to do these projects, which have minimal to no impact for the larger community, in order to provide future offsets in the form of mitigation credits for developers across the region. Choosing a property that does not require additional oversight or interest by the local community, specifically because no other landowners are affected, is a perversion of the process. Maryland should be discouraging, not encouraging the creation of MBIs solely for the creation of future credits and projects in areas where ecological, hydrological, and environmental uplift are minimal. MBIs should only be approved where the

work is required NOW, not to ensure credits for future construction; MBIs were intended as the incentive, not the purpose.

The project our group has focused on had so many problems once we, and environmental groups pointed it out, that MDE submitted a 10 page letter to the vendor. But the vendor had unlimited time to respond and was not required to engage with any of the stakeholders, subject matter experts, or the larger community during that process. Multi-million dollar stream restoration corporations have benefited from the lack of public knowledge in this area and have used marketing techniques and stated that the "lack of a plan" is actually a good thing. Even worse, they have only presented the best case scenario for these projects, and have provided no information on potential risks. Even having incorrect information in the application was not sufficient to pause the process: The application type they have submitted is incorrect given the scope of the full project and they have identified the incorrect watershed (Patapsco) that might benefit. In addition, the proposal includes incorrect information including where erosion is currently happening and the amount of impermeable land. The proposal says it is only 26% where U.S. Fish and Wildlife noted that the United States Geological Survey StreamStats webtool calculates the drainage area as 42.8 percent impervious making the area completely unsuitable for mitigation credits. Project designs threaten flora and fauna in one of the largest contiguous Forest interior dwelling birds (FIDS) areas remaining in Howard County with nothing in the proposal that would improve riparian forest. The vendor/bank sponsor is basically able to state that they will improve the stream without a true assessment of the ecology that depends on the stream--not just the in-stream environment.

The new bill will provide essential protections lacking from the current process and closes loopholes that these corporations have taken advantage of at the expense of Maryland residents and resources.

Thank you.

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