Testimony in OPPOSITION of House Bill 942 – Wetlands and Waterways Program - Authorizations for Stream Restoration Projects

March 1, 2023

Dear Chairman Barve and members of the Environment and Transportation Committee,

On behalf of the undersigned organizations we respectfully request an unfavorable report on House Bill 942 from the Environment and Transportation Committee. We represent non-profit organizations that fundraise, design, and manage millions of dollars' worth of restoration projects to help local governments achieve the pollution reduction goals established under the Chesapeake Bay Total Maximum Daily Load (TMDL). We do not do mitigation work, but rather focus on projects that address resource concerns and water quality issues. Our restoration experience spans across agricultural, urban, and suburban landscapes and includes upland stormwater best management practices (BMPs), tree plantings and reforestation projects, and wetland and stream restoration practices. We understand that each landscape is unique and requires different, and often multiple, restoration techniques to address resource degradation and water quality issues. **We are concerned for the following reasons that HB942 will restrict the use of stream restoration as an effective restoration tool, and add unnecessary challenges and delays at a critical juncture in Bay restoration efforts as we strive to meet the 2025 Bay TMDL deadline:**

1. Focusing on upland stormwater projects alone won't fix the significant number of degraded streams across the state that are contributing sediment pollution to local waterways. According to the Department of Natural Resources (DNR) Stream Health Index Map, the current ecological condition of most streams throughout the state is moderate to poor as stream health has declined significantly in the past 100 years and continues to this day. When a stream becomes channelized, disconnected from its floodplain, and otherwise degraded, it becomes prone to erosion and a source of sediment pollution adding to the impairment of local waterways. Addressing stormwater runoff at upland sources is a necessary part of the equation to capture and filter nutrient and sediment pollution, but it does not fix a degraded stream.

2. Opportunities for upland stormwater projects are limited, challenging to secure landowner permission, and are highly demanding in terms of maintenance needs. Available land and adequate space for upland projects is limited and usually on private property where landowner permission is required. As an example, in an agricultural setting, finding opportunities for upland projects often requires taking viable farmland out of production, thus impacting a farmer's bottom line and creating a barrier to implementation. In an urban setting, stormwater retrofits can require major revisions to existing critical infrastructure, making projects expensive, while only providing minimal abatement of stormwater or pollution reductions. The maintenance of upland projects is also proving to be a challenge, as is evident by the many community stormwater ponds that are chocked full of sediment and growing invasive phragmites. When not maintained, stormwater BMPS fail to work as designed, allowing large volumes of stormwater and pollutants to pass through to downstream waterways.

3. Deprioritizing stream restoration will accelerate the loss of wetlands on the Eastern Shore. Many Eastern Shore streams were low gradient headwater streams that, under more natural conditions, were floodplain stream complexes with direct connection to large forested floodplains. Wetland loss will occur because streams will continue to down-cut in response to larger volumes of stormwater passing through during rain events. This will draw down the local water table and dry out adjacent forested wetlands.

4. Pollution credits need to be based on outcomes. Requiring the Maryland Department of the Environment (MDE) to give upland stormwater projects more pollution credits than stream restoration projects undermines the pollution crediting program and the science used to develop it. Stream restoration projects provide the opportunity to achieve many diverse habitat and water quality goals that stormwater retrofit projects do not

provide. Pollution credits need to be determined (and are currently) based on measurable outcomes that consider a specific set of criteria and metrics established by experts and restoration professionals.

5. Requiring 10 years of monitoring before pollution credits can be issued will reduce incentives, create funding inequities, and marginalize small businesses. Our role as non-profit practitioners in helping local governments carry the burden of managing restoration projects has proven to be an essential part of the watershed implementation plan strategy. Waiting 10 years to be compensated for stream restoration work will make it nearly impossible for nonprofits and small businesses without sufficient equity to be a partner on these projects. This will relegate stream restoration to large firms backed by large financial banks, creating funding inequity and marginalizing small businesses that usually have local connections with landowners. This will result in major delays in progress toward meeting the Bay TMDL goals.

6. Required public notice and the opportunity to request a public meeting is already part of the permitting process for large restoration projects. Projects that disturb 5,000 square feet or more require a Notice of Intent from MDE and the Army Corps of Engineers, through which public notice is given with an opportunity to request a public meeting. Most stream restoration projects are much larger than 5,000 square feet and therefore are required to go through this process. On the Eastern Shore, it's not uncommon for a stream restoration project to be entirely on one property and impacting no more than one landowner. If a public meeting were to become mandatory, it should be specified that a public meeting be held only if more than five different landowners are affected by the project. Transparency is a good thing, but it's important that any comments that can affect a stream restoration project be rooted in science and relevant to the project details, as opposed to other factors including political pressure and the "not in my backyard" mindset.

7. The conditions established in HB942 are premature and should be determined by expert engineers, restoration professionals, and permitting agencies. The concerns over permitting and pollution credits for ecological restoration projects is the focus of an ongoing study initiated in 2022 through the passage of HB869 – Permitting for Ecological Restoration Projects Required Study. The study includes a panel of restoration experts and permitting agencies tasked with reviewing project eligibility criteria, standards for review, and applicant requirements. A favorable vote on HB942 before the workgroup concludes their study would undermine their efforts, and instead, any concerns that exist today should be brought to the workgroup for their consideration.

Up to this point, guidance on stream restoration techniques and permitting has been developed by experts through processes that were agreed upon by state and federal permitting agencies and accredited through the Chesapeake Bay Program Partnership, none of which have been included in determining the terms of this legislation. If passed, HB942 will remove stream restoration as a viable and effective restoration tool while adding significant challenges and delays in meeting restoration and pollution reduction goals under the Bay TMDL. For these reasons we ask the committee for an **unfavorable report on HB942**.

Sincerely,

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ShoreRivers

Kevin Smith
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