

March 25, 2024

Chairman and Members of the Committee.

RE: Testimony in SUPPORT of HB1266

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Dear Chairman and Members of the Committee:

On behalf of Ecotone, LLC (“Ecotone”), thank you for the opportunity to submit testimony in support of House Bill 1266. Ecotone is a fully integrated environmental restoration company serving the Mid-Atlantic region—designing and building sustainable ecosystems in urban and rural landscapes. For more than 25 years, we have collaborated with public and private clients throughout Maryland to implement sustainable environmental restoration projects—restoring function to degraded, impaired, or damaged ecosystems. As a fully integrated company, Ecotone provides all the in-house services needed to plan and implement resilient ecological restoration projects, water quality improvements, and stormwater management solutions, in particular, those subject to HB1266 requiring fully integrated solutions.

I have been an ecological restoration practitioner in Maryland for over twenty years. I led planting of the first large cell on Poplar Island; worked on the permitting and mitigation for the Intercounty Connector (ICC); provided independent environmental monitoring for bog turtles during the construction of the Hampstead Bypass; and have performed numerous environmental assessments and/or restoration work in all twenty-three counties in Maryland.

Ecotone supports this bill because it clarifies the original objective of the Clean Water Commerce Act (CWCA) of 2021, by providing language specifically allowing for non-uniform payment schedules to ensure the most cost-effective projects are selected. Applicant/Contractor financing of structural practices or bringing in investment partners typically increases the price per pound of nitrogen by approximately 45% for a 20-year project payment schedule.

The 2021 CWCA was passed with the intention of accelerating the Chesapeake Bay cleanup effort by purchasing nitrogen outcomes at the lowest possible price point, while also focusing on projects that provide co-benefits. Funding is categorized to specifically fund projects on farms and in underserved communities; there is also a funding category for land conversion practices. Ecotone and similar firms that provide structural practices or land conversion practices that have significant upfront costs, will have no incentive to make a private investment under a linear payment schedule of ten or twenty years without increasing costs by approximately 45%. That substantial 45% price increase makes these practices much more expensive and less competitive than annual practices; and since these practices require a large upfront investment in order to develop and submit a proposal, a linear payment schedule will deter competition and interest from firms that do structural practices restoration work. By limiting

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the competition to annual practices, the CWCA will filter out opportunities to provide cost-effective funding for projects in underserved communities and for land conversion practices. The legislation will therefore fail to meet its stated intention of funding the lowest price per pound opportunities and serving the sectors it is designated to serve.

HB 1266 Reduces Cost and Speeds up Bay Restoration

The proposed legislation HB 1266 Reduces Risk of Bay Degradation and Effectively Uses Taxpayer Money. Currently, the Maryland Department of the Environment (MDE) interpretation of CWCA legislation is that payments for all practices must follow a linear payment schedule with equal payment amounts in each year over twenty years. This approach increases cost for all Best Management Practices (BMPs) that require upfront construction or planting costs, by requiring businesses to finance the cost of the project and their working capital over a 10- or 20-year payment schedule. Current industry lenders are quoting project financing at 12-15% return on investment. In this scenario, almost half of the funding for Chesapeake Bay restoration goes to financing costs for any structural practice. The best way to get the lowest price per pound is to pass HB 1266. Twice as many projects with more co-benefits can be implemented by passing HB 1266, which would meet the original legislative intent to get the best price per pound of nitrogen and speed up Chesapeake Bay restoration.

Reduce Risk By Keeping Structural Practices in Play

The use of a linear payment schedule increases the state's risk profile by relying solely on annual practices. These practices typically include self-verification/reporting and require annual implementation that are subject to a myriad of risk factors including but not limited to weather, land holdings, and landowner cooperation. By using a non-linear payment schedule that allows structural practices and land conversion practices to be competitive, the state will reduce its risk and get a much better cost per pound of nitrogen reduced. Moreover, most structural BMPs are permitted projects and require five years of post-construction permit monitoring with annual monitoring reports being provided to MDE and the United States Army Corps of Engineers (USACE), to verify project success, which greatly reduces risk and ensures projects are implemented and performing.

Structural practice projects require significant upfront investment and vetting just to get to the proposal development/submission stage. If the payment schedule remains linear, there will be little to no incentive for most private firms to develop projects and submit proposals, reducing the program to annual practices that will compete with other state programs and drive the price point up for these practices.

Promote Projects that Provide Co-Benefits and Projects in Environmental Justice Locations.

Structural practices have the most co-benefits and are the most likely types of projects to be implemented in Environmental Justice communities. The co-benefits generated from these funds will be greatly reduced if there is no competition from companies to provide structural practices. Furthermore, the cost increase to finance project costs reduces funding access to only those companies with strong

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financial capacity required to get capital investment at a competitive rate. Moreover, there may not be any projects proposed in Environmental Justice communities if HB 1266 is not passed.

Consider Lower Cost Alternatives than financing/payment schedule to reduce risk and protect taxpayer investment.

MDE has indicated that the current payment schedule is the most effective way to reduce risk, even though they acknowledge the costs associated with financing the project. A performance bond which guarantees the contractual obligations are met would be a much more cost-effective approach to reducing risk if the state believes project delivery is at risk if the funds are paid at non-linear payment schedule. Again, promoting structural practices that are permitted, as-built, and monitored according to permit conditions and Chesapeake Bay Program expert panel documents greatly reduces risks versus annual practices.

Bay Restoration is being delayed and this legislation is needed.

Ecotone partnered to provide project development, design, and construction on the highest scoring project from the FY 2023 CWCA, scoring 100 points. We have prepared the design and submitted the Joint Permit Application (JPA) for this project, as we have been awaiting a contract from MDE, in accordance with the proposed payment schedule we submitted with our original proposal and in accordance with the directions stated in the RFP, to supply a proposed payment schedule. This payment schedule was developed to initiate payments at as-built approval, to ensure compliance that no payment is received from the state until the project is completed and the as-built is certified by a licensed engineer and land surveyor. Additional payments were modeled to match milestones within the post-construction monitoring, in accordance with the Chesapeake Bay expert panel guidance documents that are approved by the Water Quality Implementation team and the Executive Committee of the Chesapeake Bay Program.

Ecotone is the prime applicant of the second highest scoring project for the FY 2023 CWCA, scoring 99 points. Again, we have prepared the design and submitted the JPA for this project, as we have been awaiting a contract from MDE, in accordance with the proposed payment schedule we submitted with our original proposal and in accordance with the directions stated in the RFP to supply a proposed payment schedule. This payment schedule was developed to initiate payments at as-built approval, to ensure compliance that no payment is received from the state until the project is completed and the as-built is certified by a licensed engineer and land surveyor. Additional payments were modeled to match milestones within the post-construction monitoring, in accordance with the Chesapeake Bay expert panel guidance documents that are approved by the Water Quality Implementation team and the Executive Committee of the Chesapeake Bay Program.

Neither of our two projects — the most highly ranked among those awarded — is moving forward, because they are based on non-uniform payment schedules, which MDE is currently not allowing.

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The most cost-effective way to ensure the CWCA bill accelerates Chesapeake Bay restoration efforts as originally intended is to pass HB 1266. Risk is mitigated through existing permit requirements and can further be mitigated with performance bonds. MDE would receive twice as many projects that have more impactful co-benefits for the environment and/or underserved communities for the same funding. Moreover, legislation is not forcing taxpayers money's towards large financial institutions for project financing and using it to meet Bay restoration goals.

Should you have any questions regarding this testimony, I can be reached at 443-699-3799.

Sincerely,

Ecotone, LLC

A handwritten signature in black ink, appearing to read "Matthew Hubbard".

Matthew Hubbard

Director- Technical Solutions Manager