

# THE PRINCE GEORGE'S COUNTY GOVERNMENT

(301) 952-3887

County Council  
**THOMAS E. DERNOGA**  
Council Member, 1st District

October 26, 2009

Neil J. Pedersen, Administrator  
State Highway Administration  
707 North Calvert Street  
Baltimore, MD 21202

Re: *IAWG Deletion of ICC Compensatory Mitigation and Environmental Stewardship Projects in Prince George's County*

Dear Mr. Pedersen:

I am writing to express serious concerns about State Highway Administration's recent proposal to greatly reduce the number and scope of ICC-related environmental projects in Prince George's County. The ICC team has proposed dropping projects outright from the original Aquatic Resources Projects List, as well as reducing its commitment to retained projects by reclassifying them from Compensatory Mitigation (CM) into Environmental Stewardship (ES). This list, issued on August 5, 2009, reduces the number and scope of projects previously identified for Prince George's County. Despite strong opposition from the County, the Interagency Working Group (IAWG) decided at its October 7<sup>th</sup> meeting to move forward with its proposal that shortchanges Prince George's County. I join the County Executive in opposing reductions recommended by the ICC Team. I understand that the Interagency Work Group (IAWG) has decided to move forward with its proposal to shortchange Prince George's County at its October 7<sup>th</sup> meeting. This proposal is unacceptable and I request that you rescind it immediately. I am also troubled by the lack of public participation in these proposed environmental reductions.

Based on the August 5<sup>th</sup> IAWG recommendation, the only Compensatory Mitigation (CM) projects in Prince George's County have been down-graded to Environmental Stewardship (ES) projects. One of these also was reduced by more than half. Further, six (6) ES projects are to be deleted altogether.

Compensatory Mitigation:	IC-59 & IC-62 – Reduced to Environmental Stewardship
Environmental Stewardship:	IC-59 – Reduced in scope by over 50%
	IC-43 – Eliminated
	IC-48 – Eliminated
	IC-49 – Eliminated
	IC-50 – Eliminated
	IC-51 – Eliminated
	LP-17 – Eliminated

The result would be the following:

County		Linear Feet of Restoration in Record of Decision	Linear Feet Resulting from IAWG Proposal	Change
Prince George's	CM	3,500	0	(3,500)
Prince George's	ES	6,900	6,900 <sup>1</sup>	0
Montgomery	CM	18,700	15,312	(3,388)
Montgomery	ES	41,800	38,523	(3,277)

In addition, the only 2 acres of wetland restoration in Prince George's County has been eliminated. The Chart above shows that Prince George's County's already limited restoration amount has been cut by one-third. And, as a percentage of the amount of total restoration, it drops from a mere 15% to 8.8% of the stream restoration total for the entire ICC project.

On August 5, 2009, the County DPW&T submitted a series of comments on the IAWG's reclassification proposal. I agree with the concerns expressed in these comments. On September 30, 2009, Chuck Weinkam, Environmental Mitigation Manager, ICC Environmental Management Team, Office of the Intercounty Connector, submitted a response to the County comments. These responses are completely unacceptable. Responses to many comments simply restate the flawed process that inevitably leads to these results. Mr. Weinkam's comments are self-serving and simply justify the previous position of SHA to favor Montgomery County needs and desires over Prince George's County's concerns. The County comments correctly captured what SHA is doing:

With a priority on the Paint Branch over other affected systems, mitigation projects over stewardship, favoring projects on the basis of what has been worked on to date (which is largely Paint Branch Projects or Contracts A and C, in this case on a portion of Contract C and only one project of the Paint Branch are in Prince George's County), these factors work against maintaining projects in Prince George's County. Under this paradigm, there are no mitigation projects left in Prince George's County.

Mr. Weinkam's explanation simply reinforces that SHA pre-determined the results based on how the ICC project was established in terms of time lines and priorities. The ICC has long been a Montgomery County road project that SHA has forced on Prince George's County, and SHA is continuing to provide benefits to Montgomery County at the expense of Prince George's County. The claim that upstream improvements in Montgomery County benefit Prince George's County is correct, but it ignores the additional benefit that the County inventory of stream restoration projects is advanced in Montgomery County but not in Prince George's County.

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<sup>1</sup> One Prince George's County project may be doubled, or it may be substituted for by a Montgomery County project that the IAWG considers a higher priority. The 5,300 linear foot figure below presumes this project is doubled in scope. If it is eliminated, then the resulting figure will be 4,500 total linear feet for Prince George's County.

Mr. Weinkam's arguments are inconsistent. At first, he argues that mitigation is "significant from a regulatory perspective" because SHA has to account for impacts. However, when the County argues that the only CM projects in the County are being downgraded, Mr. Weinkam dismisses the issue as insignificant since SHA is "committed" to the ES projects. However, upon questioning at the October 7th meeting, no one from SHA could guarantee that the State will complete the projects if funding becomes even more of an issue. It is factually accurate that mitigation has more significance than "stewardship" because mitigation projects are required. Furthermore, the ICC would not be permitted to open if the CM projects were not completed while there is no such enforcement mechanism for ES projects. A statement of commitment by the SHA is not reassuring since previous statements of commitment have not prevented the proposed cancellation of 6 stewardship projects in Prince George's County.

Mr. Weinkam seeks to base his recommendations on a "watershed-based" approach using the best available technical information available. It is clear from his written comments and the comments at the October 7th meeting that this approach discriminates against Prince George's County, and it appears that IAWG leadership has a faulty understanding of issues in Prince George's County or simply an overall bias. The ICC Team members have indicated that they are willing to write off the Indian Creek watershed, concluding that there is little value to expending funds on Indian Creek projects. This area is downstream of Konterra. The Anacostia Watershed Society and I have worked diligently with Konterra, our Department of Public Works and Transportation and our Department of Environmental Resources to make Konterra a model of storm water management. Not only will Konterra storm water management exceed the standards of current State law, it will exceed the standards of the Storm Water Act of 2007. Despite two years of delays on the State level in getting implementation of the law, Prince George's County has held Konterra to a much higher standard than what the 2007 law requires. The ICC project is being held to a lower standard and has already had soil erosion issues and has flooded at least one home.

In addition, when the nearby "Brick Yard" project was approved last year, the County Council imposed a condition requiring the developer to provide a stream assessment for Indian Creek through the Beltsville Industrial Park. The assessment has been completed already and we are now assessing issues of prioritization and funding. We are also being more forceful about seeking enforcement on environmental violations in and around the Beltsville Industrial Park. Simply, while SHA may be willing to write off Indian Creek in Prince George's County, the County, affected municipalities and local watershed protection groups have taken the opposite approach. Further, the area of the Beltsville Industrial Park is known to be a source of serious pollutants (e.g., PCB's), and addressing this pollution should be a high priority. Therefore, I request that you repudiate the IAWG's position of neglect towards remediation of the Indian Creek, and to clarify that SHA and the State of Maryland support its remediation as part of a comprehensive improvement plan for the Anacostia River Watershed.

I find it suspect that the ICC team has now found various ES-CM projects unworthy, since these same projects were originally assessed and approved by the ICC team and included in the Record of Decision. Either the ICC team's initial assessment and selection process was flawed, or the projects are in fact worthy of consideration and should not be eliminated. Even if a project is to be dropped

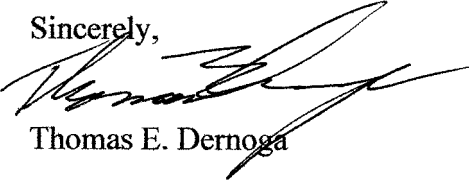
for legitimate reasons, the IAWG team should consider substitute projects submitted by the County. Instead, the IAWG has rejected even the idea of substitutions for projects to be dropped.

Mr. Weinkam also justifies the ICC team's proposal based on "full input of the IAWG including the USACE, EPA and MDE." But, at the most recent meeting of the IAWG, several members were still asking questions about projects slated to be dropped, and about the possibility of substitutions. Additionally, there has been no public process and the IAWG has made it obvious that it wants no public process. The IAWG asserts that, during the NEPA process, the public was made aware that future changes to the CM-ES scope of projects might occur, and that it considers this to be sufficient public notification. It is inappropriate that SHA is not informing the public about which changes are proposed and it is not seeking public comment on these proposals. SHA should be required to engage in public involvement. Considering that many Prince George's County residents have opposed the ICC, it is unacceptable to watch promised "stewardship" deleted because SHA has decided to "over-benefit" Montgomery County, thus freeing it of its commitments in Prince George's County. If SHA and the ICC team wish to renege on commitments, the public should be allowed fair opportunity to comment.

In conclusion, the IAWG's determination to delete the only CM projects, and almost all of the few ES projects, in Prince George's County is unacceptable. The rationale employed is self-serving and biased. The IAWG totally discounts the value of Indian Creek restoration projects and focuses almost entirely on Montgomery County projects. In addition, the IAWG has a flawed understanding of Konterra, current County stormwater management efforts in the watershed and some very basic facts. Last, rather than having to justify its position, the IAWG has decided to preclude public comment. Therefore, I respectfully request that you repudiate the IAWG position and have the IAWG develop a balanced and equitable proposal that gives due consideration to the Indian Creek, and that it allows public comment on the current or revised proposal.

Thank you for your consideration of this matter. Please call me at (301) 952-3887 if you have any questions.

Sincerely,



Thomas E. Dernoga

cc: Hon. Martin O'Malley  
Hon. Anthony Brown  
Hon. Ben L. Cardin  
Hon. Barbara A. Mikulski  
Hon. Steny H. Hoyer  
Hon. Donna F. Edwards  
Hon. Chris Van Hollen, Jr.  
Hon. Douglas J.J. Peters

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