



January 21, 2021

To whom it may concern –

As the leaders of the agencies that developed and are coordinating the implementation of Pennsylvania's Phase 3 Chesapeake Bay Watershed Implementation Plan (Phase 3 WIP) – the Pennsylvania Department of Environmental Protection (DEP), the Pennsylvania Department of Agriculture (PDA), and the Pennsylvania Department of Conservation and Natural Resources (DCNR) – we offer the following comments on the draft Conowingo Watershed Implementation Plan (Conowingo WIP). Please note that these comments on the draft Conowingo WIP do not represent any final agreement or determination by DEP, PDA, or DCNR to ultimately adopt and participate in the Conowingo WIP, and that any such determination will be based on an assessment of the final Conowingo WIP.

In the draft Conowingo WIP, 95% of the nitrogen load reductions come from Pennsylvania, and these reductions come from best management practices (BMPs) that account for 93% of the total cost. The draft Conowingo WIP further indicates that roughly 90% of the nitrogen load reductions and associated costs will come from BMPs implemented in the agricultural sector. Moreover, the edge-of-tide nitrogen load reductions in the draft Conowingo WIP are in addition to load reductions implemented through Pennsylvania's Phase 3 WIP.

Pennsylvania's Phase 3 WIP is a comprehensive strategy based on unprecedented local-level support and engagement from a wide range of partners committed to improving water quality locally and in the Chesapeake Bay. The local planning goals in Pennsylvania's Phase 3 WIP were formulated through extensive and sustained engagement of local, regional, and federal partners. Most of the nutrient and sediment reductions in Pennsylvania's Phase 3 WIP also come from BMPs implemented by agricultural operations.

Given these facts and context, our overarching concerns with the draft Conowingo WIP include:

- **funding:** Identifying and securing the funding necessary to implement the Conowingo WIP will be crucial towards achieving the goals of the Conowingo WIP. We are aware that the Conowingo WIP Financing Strategy was published on December 10, 2020, understanding that the Conowingo WIP and the Financing Strategy are on separate but parallel trajectories. We will provide more specific feedback and comments on the Financing Strategy through the Conowingo WIP Steering Committee and the Principals' Staff Committee.
- **engagement:** Key local and regional partners in each sector were at the center of development of Pennsylvania's Phase 3 WIP and those partners are crucial for the successful implementation of Pennsylvania's Phase 3 WIP. We appreciate the engagement that has already been conducted for the Conowingo WIP and we strongly believe that substantial, sustained, and strategic engagement of key partners will be crucial for the success of the Conowingo WIP.
- **relationship with Pennsylvania's Phase 3 WIP:** We have several concerns, detailed below, about how implementation of the Conowingo WIP will impact on implementation of Pennsylvania's Phase 3 WIP – including the Countywide Action Plans, particularly regarding reporting and crediting of BMPs and regarding perceived and real competition between the two WIPs for BMPs in high-priority and high-impact locations.

- **timing:** We believe the current timeline in the draft Conowingo WIP is too aggressive. Putting the Conowingo WIP on the same timeline as Pennsylvania's Phase 3 WIP will create significant challenges for funding, partner engagement, and achieving the goals of both WIPs. Impacts of the COVID-19 pandemic should also be considered as it relates to the timeline for Conowingo WIP implementation.

We provide more details about these and other concerns in the comments below, which are structured according to the major sections in the draft Conowingo WIP.

Conowingo WIP Framework

- Overall, we support efforts to establish a separate plan and funding strategies to address the issues related to the Conowingo Dam.
- The Conowingo WIP will add additional pressures on existing Phase 3 WIP partners and stakeholders. What considerations have been made to ensure Phase 3 WIP partners are kept engaged throughout the implementation of the Conowingo WIP?

Accounting for the Impacts of Climate Change

- How will the Conowingo WIP engage vulnerable communities in discussions related to resiliency and climate mitigation?
- How can needed resources be better directed to underserved communities through the Conowingo WIP financing strategy?
- There are multiple benefits to reforestation and green infrastructure practices. Are there opportunities to prioritize these practices to protect vulnerable communities from the impacts of climate change while simultaneously supporting the goals of the Conowingo WIP?
- Along with reforestation and green infrastructure, it is important to note that many of the soil health best management practices (BMPs) in Pennsylvania's Phase 3 WIP also achieve the stated goals in this section of the draft Conowingo WIP.

Comprehensive Local, Regional, and Federal Engagement Strategies and Commitments

- How will the COVID-19 pandemic impact efforts to successfully educate, engage, and solicit input from stakeholders in the planning and implementation phases of the Conowingo WIP, particularly those in rural communities where broadband access may be limited?
- We believe it is important to be realistic about impacts to the construction season due to COVID-19 disruptions when creating projections and looking back on the 2020 season.
- Given that the same local partners will be key to the success of Pennsylvania's Phase 3 WIP and the success of the Conowingo WIP, and given that these same partners dedicated considerable time and energy toward developing ambitious, but achievable, goals for Pennsylvania's Phase 3 WIP, thoughtful and strategic communications about the Conowingo WIP will be needed to mitigate the risk that key partners perceive the goals of

the Conowingo WIP as an additional burden that they will need to shoulder after they already put their best foot forward toward developing and implementing the goals of Pennsylvania's Phase 3 WIP.

- Outreach and engagement strategies for the Conowingo WIP must include input from key agency and partner organizations.
- How will new outreach tools and strategies for the Conowingo WIP address and mitigate potential stakeholder fatigue from multiple Chesapeake Bay WIPs and from changing targets and goals due to impacts from climate change or modeling changes? To maintain and expand critical stakeholder engagement and partnership in the development and implementation of the Conowingo WIP, we believe it will be important to look for opportunities to reinforce the fact that the work done to date by the agricultural community has made a difference in cleaning up the Chesapeake Bay and that we are continuing to move in a positive direction. We believe that successful implementation of the Conowingo WIP and the jurisdictional Phase 3 WIPs will require clear and consistent communication that the issue is not the direction of movement, which has been positive, but rather the need to increase the rate of that positive movement.

Financing System Implementation Strategy

- Successful implementation of the Conowingo WIP will require a successful funding strategy. The lack of detailed information within the draft Conowingo WIP regarding the financing strategy presents a significant challenge in reviewing the draft Conowingo WIP.
- The draft Conowingo WIP notes that pooling resources is the most cost-effective approach, which seems reasonable, but pooling resources requires support across the many jurisdictions identified in the draft Conowingo WIP; how will this coordination be accomplished?
- This section of draft Conowingo WIP identifies reduction of administrative costs as a prime option for reducing overall costs of the Conowingo WIP. Although there are likely some opportunities to improve efficiencies, government agencies and nonprofit organizations are anticipating budget reductions and operational challenges due to the COVID-19 pandemic. What specific inefficiencies have been identified that would help towards reducing the overall cost of the Conowingo WIP?
- How will stakeholders be informed of new funding and/or financing opportunities associated with the Conowingo WIP? Will there be an outreach strategy associated with the financing plan?
- Could the payback mechanism for private capital investments be structured like an in-lieu fee (ILF) program?
- Will any funding be available to the primary Phase 3 WIP jurisdictions to cover administrative costs associated with managing and implementing the Conowingo WIP?
- Are there opportunities for landowner incentives above and beyond the typical cost-share program rates and are they being prioritized through the Conowingo WIP financing strategy?

- We recommend exploring whether the Conowingo WIP Financing Strategy could be implemented through existing state revolving fund entities (e.g., the Pennsylvania Infrastructure Investment Authority), perhaps through cooperative agreements.
- The draft Conowingo WIP is critical of existing state and federal cost-share and grant programs and consistently states that these programs need to shift away from a “pay for practices” model and be reinvented under a framework of “pay for performance,” purchasing of ecosystem services, and a new public procurement process. The “pay for performance” framework essentially moves away from grants and toward low-interest loan programs or payments to farmers after the fact for practice installation through annual payments for ecosystem services, intending to see competition for the best price for practice. This framework is challenging for farmers who cannot usually increase prices to cover costs to install improvements and acquire new technology. In order to shift to “pay for performance” model where farmers are paid after installing practices, it must be recognized that on-farm BMPs have to be planned, permitted, installed, and paid for before any sort of ecosystem service payment could be made.
- The financing strategy section of the draft Conowingo WIP calls to “transfer risk to the private sector” as an “effective way of reducing upfront capital costs.” What does this transfer of risk look like in the context of controlling nonpoint source pollution from agricultural operations? If this “risk” is shifted to the agricultural operation itself, then many agricultural operations may not be able to cover this risk, along with the risks they normally assume from weather, market volatility, crop disease and infestations, and the effects of the COVID-19 pandemic.
- The Conowingo WIP Financing Strategy states, “the adoption of market-based procurement systems creates the potential for identifying innovative restoration approaches.” How will these systems be vetted, beyond financial returns, to ensure they are viable, scientifically-sound, environmentally-sound approaches to accomplishing the goals of the Conowingo WIP?

Primary Conowingo WIP Strategy

- How will additional riparian buffer planting efforts under the Conowingo WIP be coordinated with riparian buffer acres planned and implemented under Pennsylvania’s Phase 3 WIP and Countywide Action Plans (CAPs)? More generally, how can the jurisdictional Phase 3 WIPs and the Conowingo WIP complement each other overall, versus being competitive with each other?
- What strategies will be implemented to keep farmers, landowners, and other key partners engaged and motivated towards the end goals of the jurisdictional Phase 3 WIPs and the Conowingo WIP as additional pressure is placed on them to implement BMPs and plant additional riparian buffers? We want to reinforce the role farmers played in the development of Pennsylvania’s Phase 3 WIP, particularly in defining appropriate riparian buffer goals. While we would love to see riparian buffers expanded, we want to keep our agricultural landowner stakeholders in mind as their cooperation and commitments are critical to any riparian buffer success in Pennsylvania.

- The draft Conowingo WIP provides a map of potential opportunities for forested riparian buffer and wetland BMP implementation. When will additional geospatial analysis and data be provided to the jurisdictions to help prioritize forest plantings?
- Similarly, as part of the Conowingo WIP, it would be beneficial to have a geospatial analysis conducted to prioritize large parcels (e.g., commercial and government properties) for turf conversions.
- Will there be a gap analysis conducted to determine how best to prioritize efforts and utilize resources to accomplish milestones for both the Conowingo WIP and the jurisdictional Phase 3 WIPs? Could this result in revised strategies for implementation of the jurisdictional Phase 3 WIPs?
- Will there be a full environmental impact statement developed in the case that dredging behind the Conowingo Dam is deemed a viable option through Maryland's pilot project?
- Could an analysis be conducted overlaying the riparian buffer projects, as well as other BMP types (e.g., supplemental nutrient management, wetland restoration), recommended in the first and second tier CAP counties? The CAP coordinators could potentially play a role with collecting and administering this work in coordination with DEP. In so doing, the CAP coordinators could be the "third partner" to implement the riparian buffer installations in the county they serve.
- Could the Alliance for Chesapeake Bay be the "third partner" to implement the work in coordination with DCNR to leverage DCNR's riparian buffer funding program? DCNR staff could potentially assist with facilitating dialogue between the local municipality and the "third partner."
- In determining potential locations and associated partners for additional BMPs under the Conowingo WIP, particularly riparian buffers, we suggest overlaying local and state parks, and other public areas. This will facilitate determining the "third party" to administer and implement the riparian buffer plantings.
- Have locations been determined yet for planting the 17,000 acres of urban forest buffers, and 49,000 acres of turf to trees (urban forest planting)?
- How can the Conowingo WIP utilize Pennsylvania Emergency Management Agency flood management strategies and effectively target communities most impacted by flooding?
- While the multi-jurisdictional approach of the draft Conowingo WIP has many positive aspects, it does create challenges in a number of different areas, including: the potential double-counting/crediting of BMPs; potential competition for farms/farmers willing to install high-priority BMPs in high-priority locations; and questions regarding whether there is enough geographic space within the Chesapeake Bay model to apply and credit all the BMPs required under Pennsylvania's Phase 3 and the Conowingo WIP. These challenges, coupled with the Conowingo WIP's stated goal of targeting the most effective BMPs in the most effective locations, could create significant competition between traditional cost-share programs in Pennsylvania and projects funded under the Conowingo WIP. This competition could actually drive costs up, rather than reduce costs.

- Throughout the draft Conowingo WIP, it is recognized that farm operations need to be sustainable long-term for the Conowingo WIP to be successful. How will farm economic and environmental sustainability be incorporated into the development and implementation of the Conowingo WIP? With more than 90% of the solution to the draft Conowingo WIP challenge resting on agriculture, significant financial assistance will be needed to implement the identified practices on the ground, especially given the current challenging economic environment.
- On page 29, the primary strategy section of the draft Conowingo WIP highlights natural filters (wetland restoration and riparian forest buffers); we recommend including grass riparian buffers in this list. Grass riparian buffers are another significant natural filter and are included as a priority practice in Pennsylvania's Phase 3 WIP. Similarly, we recommend adding manure transport to the nutrient reduction practices list in the draft Conowingo WIP.

Accountability, Tracking, and Crediting

- It will be critical for partners to understand new reporting and tracking protocols so that projects are appropriately credited to either the jurisdictional Phase 3 WIPs or the Conowingo WIP. While it is the responsibility of the Conowingo Implementation Team to ensure the tools are made available, it is important to note: (1) that constant coordination with the state agencies will be required to ensure quality assurance and quality control on the data; and (2) that additional funding, as yet unidentified, will be needed to support agency staff in this initiative.

Adaptive Management, Milestones, and Progress Reporting

- What type of milestones (numeric and programmatic) are anticipated for the Conowingo WIP in the first two years (i.e., 2021-2022)? This seems like a very short timeline, particularly considering the current lack of additional funding and/or resources associated the Conowingo WIP. How will the Conowingo WIP grantees develop programmatic milestones? We assume that the Conowingo WIP grantees would continue to coordinate with the primary jurisdictions (e.g., New York, Pennsylvania, Maryland) to develop the additional milestones. Where will the additional funding come from to support agency staff in this initiative?

Timeline and Next Steps

- The timeline in the draft Conowingo WIP is very aggressive, especially considering the current lack of a detailed funding and financing plan. Flexibility needs to be built into the Conowingo WIP process. We believe that the Conowingo WIP should *not* be on the same timeline as the jurisdictional Phase 3 WIPs (i.e., practices in place by 2025); we believe instead that the Conowingo WIP should be on a later timeline (e.g., practices in place by 2035 or 2045).
- In the draft Conowingo WIP, completion and launch of the Conowingo WIP's financing framework does not occur until 2021 and 2022, respectively, which could make it difficult for partners and local stakeholders to realistically commit to the Conowingo WIP expectations.

- We agree with the statement in the draft Conowingo WIP that, “additional information such as when and how much funding will be available for [Conowingo] WIP implementation is needed to reinforce a timeline with sufficient reasonable assurance that it is achievable...”

Thank you for the opportunity to comment on the draft Conowingo WIP. We look forward to continued engagement in this important undertaking to achieve our shared goals of restoring local waterways and the Chesapeake Bay.

In partnership,



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