



GREENBELT CITY COUNCIL

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November 16, 2023 - *VIA EMAIL ONLY*

Re: Baltimore-Washington Rapid Rail's Request for Water Quality Certification for the Superconducting Magnetic Levitation (SCMAGLEV) Project, 23-WQC-0007

Dear Ms. Spendiff,

On behalf of the City of Greenbelt, Maryland (Greenbelt), we submit the following comments on the Baltimore-Washington Rapid Rail's (BWRR) Request for Water Quality Certification for the Superconducting Magnetic Levitation (SCMAGLEV) Project, 23-WQC-0007.

Greenbelt opposes the SCMAGLEV. The project would cost billions of dollars at a great cost to the public while providing benefits to only a small group of people who can afford its high fares. While Greenbelt and other Prince George's County residents would be subject to the greatest impacts from the project, they would receive none of its benefits. There is no proposed station in Prince George's County. On the contrary, the project would harm human health and the environment, destroy parkland, compromise the integrity of the Greenbelt National Historic Landmark, and reduce residents' quality of life. Furthermore, the negative impacts from the SCMAGLEV would disproportionately fall on areas and communities with high levels of poverty, existing health disparities, and on those disproportionately affected by pollution from other sources, contrary to environmental justice principles.

BWRR's request for a Water Quality Certification similarly has major flaws. Greenbelt strongly urges the Maryland Department of the Environment (MDE) to deny BWRR's Request for Water Quality Certification for the SCMAGLEV Project. The Water Quality Certification application is very conceptual and omits key details that would allow the public and MDE to understand the full water quality impacts of the project, saving those details until later phases of design when it may be too late to address them. For example, BWRR promises "best management practices to control stormwater impacts," but leaves out specifics. In addition, BWRR's application reveals that the project will have significant impacts to forested areas near Greenbelt, with no concrete plan for mitigation. SCMAGLEV will leave hundreds of acres of impervious surface where now there is greenspace and impact Beaverdam Creek, in violation of Maryland's antidegradation policy. For those reasons and the others presented in the attached comments, MDE must deny certification.

Greenbelt supports the separate and thorough comments submitted by the Maryland Coalition for Responsible Transit and urges MDE to carefully consider those comments.

Sincerely,

A handwritten signature in black ink that reads "Emmett V. Jordan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Emmett V. Jordan
Mayor of the City of Greenbelt

cc: City Council
Josué Salmerón, City Manager
Terri Hruby, Director of Planning &
Community Development

GREENBELT'S COMMENTS ON BWRR'S WATER QUALITY CERTIFICATION APPLICATION, 23-WQC-0007

The City of Greenbelt (Greenbelt) has actively participated in the administrative processes for the Superconducting Magnetic Levitation Project (SCMAGLEV or Project), including providing extensive comments¹ on the SCMAGLEV Draft Environmental Impact Statement (DEIS).² Greenbelt now strongly urges the Maryland Department of the Environment (MDE) to deny Baltimore Washington Rapid Rail's (BWRR's) Request for Water Quality Certification (WQC) for the SCMAGLEV. BWRR's WQC application does not present a full picture of the Project's impacts on federal or state water quality requirements, but even the incomplete information revealed in BWRR's application shows that the SCMAGLEV is inconsistent with Maryland's antidegradation policy and will cause impermissible water quality impacts. For those reasons and the others presented below, MDE must deny certification.

I. Introduction to the City of Greenbelt and the Impact of the SCMAGLEV Project on Greenbelt.

Greenbelt was created in 1937 by the federal government as the first of three New Deal "greenbelt towns" which pictured a union of city and country life as an attempt to solve social and economic problems confronting the nation. The city's design integrated natural and built elements in a "unified plan for complete community life."³ In the historic core of Greenbelt, homes are arranged in superblocks with the fronts of houses facing internal parks, gardens, and wooded areas designed to be the focus for the families living in the community. Internal walks lead residents from their homes through these parks and down to the community's center, instead of routing pedestrians along streets.

While the "belts of green between neighborhoods . . . offer easy contact with nature," another of the defining features in the city's original design is the belt of green surrounding its core and protecting it from encroaching development.⁴ Greenbelt has retained large portions of its original green belt, although the city has grown beyond its historic core, with the surrounding farmland of the 1930s being bisected by highways and divided into privately owned parcels and

¹ See generally Comments of the City of Greenbelt on the Baltimore-Washington Superconducting Maglev Project Draft Environmental Impact Statement and Department of Transportation Act Section 4(f) Evaluation (May 24, 2021) (DEIS Comments), available at <https://www.greenbeltmd.gov/government/departments/planning-community-development/federal-state-projects/maglev-project-information>.

² Draft Environmental Impact Statement, prepared by the Maryland Department of Transportation and the U.S. Department of Transportation, Federal Railroad Administration (DEIS).

³ *Greenbelt: History of a New Town, 1937-1987*, at 31 (Mary Lou Williamson ed., 1997).

⁴ Greenbelt City Link, *History of Greenbelt, Maryland, "A National Historic Landmark"*, <https://www.greenbeltmd.gov/home/showdocument?id=2656>, visited November 16, 2023.

developed. It has been stated that the Greenbelt of today looks “a bit like some of Europe’s medieval towns that have been recently surrounded by new modern neighborhoods.”⁵

As is evident from the map below, *see* Figure 1, the proposed SCMAGLEV would alter and divide the city with no integrating or unifying features proposed in mitigation.

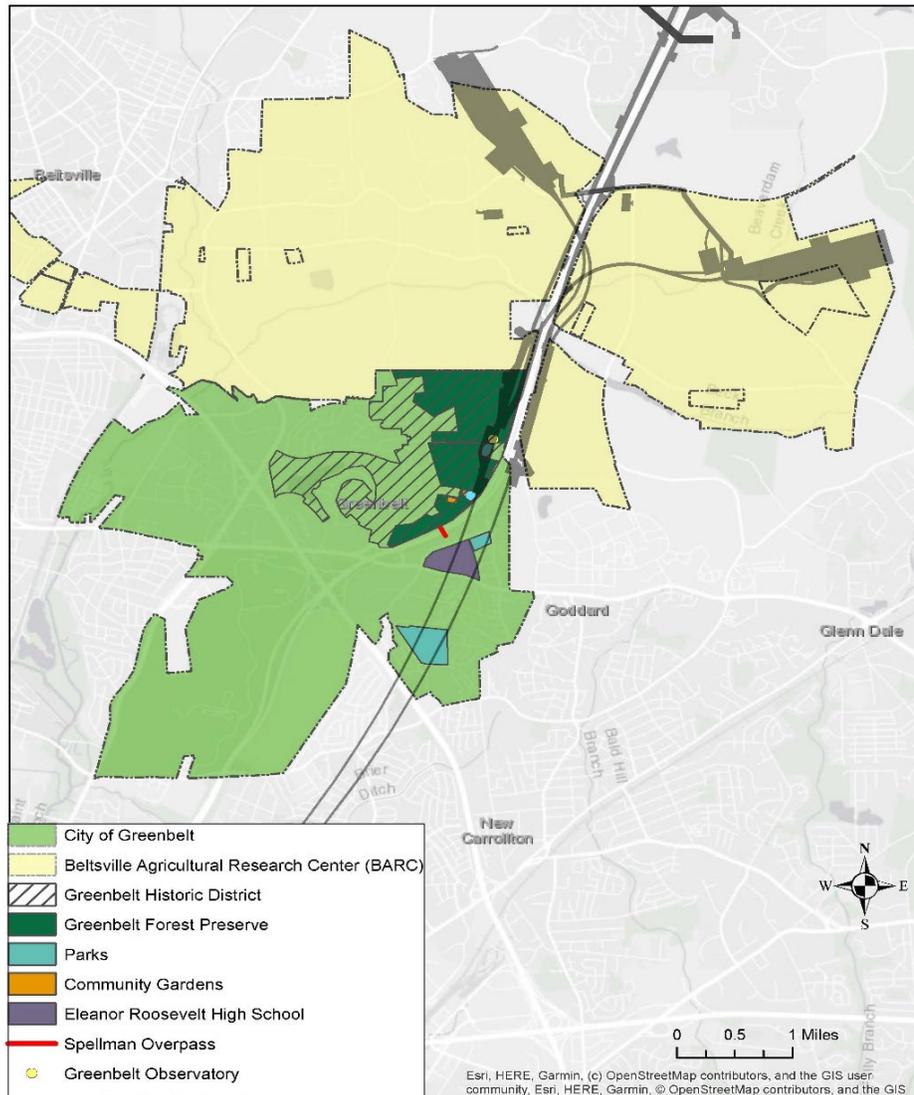


Figure 1: SCMAGLEV Build Alternatives within the City of Greenbelt and BARC

This Project would have serious and substantial impacts on Greenbelt, without providing any benefits to the city or its residents. Furthermore, the negative impacts from the SCMAGLEV

⁵ *Greenbelt: History of a New Town, 1937-1987*, at 12.

would disproportionately fall on areas and communities already affected by lower incomes, pollution from other sources, and existing health disparities along the proposed routes.

The proposed routes for the SCMAGLEV would impact places that are vital to the character of Greenbelt, including the Greenbelt Forest Preserve, the Greenbelt Historic District, and recreational and residential properties within Greenbelt. For example, one of the proposed SCMAGLEV routes would destroy two side-by-side Northway ballfields in Greenbelt. BWRR also proposes to tunnel under residential buildings in Greenbelt such that the people living there would feel vibrations from the SCMAGLEV. The SCMAGLEV's DEIS and now the WQC application disclosed no site-specific geotechnical analysis of this area even though these residences have suffered from cracking and bowing of structural walls because of existing ground movement. The DEIS described proposed, ongoing impacts to the Greenbelt community, in addition to proposed condemnation of community land:

A portal location (transition from tunnel to viaduct) would be located approximately 75 feet from the northern most condominium buildings in the Greenbriar Condominiums community in Greenbelt. The tunnel would be as close as 14 feet underground beneath buildings, and residents would experience impacts due to vibration, as well as changes in visual quality with views of the portal and viaduct. In addition, property acquisition from the community would remove portions of a community garden and open space. The removal of the garden and open space would impact views and impact community cohesion as there would be fewer opportunities for community members to gather and use these areas as well as less green space to view.⁶

With the proposed build alternatives for the SCMAGLEV, “[m]ultiple residential properties above the tunnel portions of the alignment within and near the Woodlawn, New Carrollton, Greenbelt, and South Laurel neighborhoods would experience vibration impacts.”⁷ Yet, BWRR has failed to provide sufficient site-specific geological and geotechnical analyses or supporting data that would explain the proposed path for the SCMAGLEV. More generally, the DEIS and the WQC application provide little evidence that BWRR has assessed the impact of existing soil strata on the tunneling design and construction plans to ensure that the proposed SCMAGLEV route is safe and viable, or, as discussed below, that the tunneling would not have adverse impacts to water quality including the cumulative impacts of building and tunneling a linear project in a sensitive watershed, unearthing toxic spoils, creating aquifer breaches, or other possible tunneling impacts on water quality.

II. The SCMAGLEV Is an Unnecessary and Unwanted Project with Unacceptable Environmental Justice Impacts.

The SCMAGLEV if built as proposed would harm human health and the environment, destroy parkland, and reduce residents' quality of life and property values. The SCMAGLEV would also cost billions of dollars, likely to be subsidized by the public, but provide benefits to

⁶ DEIS at 4.4-10 (emphasis added); *see also* DEIS App. D.3 at D-96 to 97.

⁷ DEIS at 4.4-10.

only a small minority of people who are wealthy enough to afford the high fares and fortunate enough to live near one of its stations, none of which are in Greenbelt or even in Prince George's County. Making matters worse, the SCMAGLEV would negatively impact the true public transit options that serve the area and the communities such as Greenbelt that rely on them.

The DEIS stated that the Project would have disproportionate impacts on areas and communities with high levels of poverty and those already affected by pollution from other sources,⁸ contrary to environmental justice principles. Some of these impacted communities are in Greenbelt. This directly contravenes Governor Moore's stated commitment to environmental justice. The Project's impacts on greenspace in the Greenbelt area would deepen existing environmental justice disparities regarding access to nature. The BWRR nonetheless prioritizes high-speed travel from city-to-city over the day-to-day commuting that would be impacted in the communities where the SCMAGLEV would be constructed.

In its Social and Economic Justification (SEJ), prepared as part of the antidegradation analysis, BWRR discusses only what it perceives as the benefits from "construction spending" to "EJ communities ... adjacent to the project,"⁹ but none of the negative impacts on those communities.¹⁰ This disparity in the discussion of purported economic benefits, on the one hand, and environmental impacts, on the other, shows that the BWRR has not fully appreciated that access to nature is also an issue of equity and environmental justice.

BWRR proposes that Greenbelt shoulder too much of a burden for the SCMAGLEV. Moreover, as discussed below, the WQC application does not sufficiently analyze the Project's water-quality related impacts, which MDE must consider pursuant to 40 C.F.R. § 121.3 (2023). So, in addition to asking Greenbelt and other communities to shoulder an uneven burden, the BWRR does not even fully spell out what that burden will be.

III. MDE Lacks Sufficient Information to Grant BWRR's Request for Certification.

MDE cannot grant BWRR's request for certification because BWRR's WQC application provides insufficient information to fully understand impacts to federal and state water quality requirements.

According to the Federal Railroad Administration's website, the overall environmental review process for the SCMAGLEV – which is required by the Joint Permit Application (JPA) for

⁸ DEIS Comments at 165 & 172; *see also* WQC Application, Antidegradation Analysis, Social and Economic Justification Report, Rev. 2 at App'x I (Mar. 2022) (map showing impacted communities along the SCMAGLEV route). These comments cite and refer to the WQC Application and Joint Permitting Application documents located here: <https://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/SCMAGLEV.aspx>.

⁹ WQC Application, Antidegradation Analysis, Social and Economic Justification Report, Rev. 2 at 13.

¹⁰ *Id.* at 18.

the Project – remains paused, and there is no indication about when it will restart or conclude.¹¹ Moreover, the U.S. Army Corps’ complete review of proposed impacts to wetlands and waterways is part of the JPA and so is not available for MDE to consider, making it all the more important for BWRR’s WQC application to provide robust information.

BWRR’s WQC application presents water quality impacts from SCMAGLEV build alternative J-03, but because the environmental review process is on hold, it is not clear if that alternative will be selected. As MDE explains in its public notice for the WQC application, “[a]t this time the alignment proposed in the request for [WQC] known as J-03 has not been accepted as the preferred alignment under [the National Environmental Policy Act].”¹² Therefore BWRR is asking MDE to evaluate – and certify – a Project that could end up being very different. Likewise, on November 6, 2023, BWRR announced a settlement with a housing developer regarding BWRR’s proposed condemnation of a parcel in downtown Baltimore related to its SCMAGLEV station there. In its announcement of the settlement, BWRR stated that it had secured an easement that allows the housing project to move forward on a parcel BWRR previously sought to condemn for the SCMAGLEV, even though prior SCMAGLEV plans showed SCMAGLEV facilities occupying the parcel. This settlement suggests that the final route for the SCMAGLEV is evolving, as are its water quality impacts.¹³

As described more fully below, BWRR’s WQC application saves key details until later phases of design. BWRR relies on empty words like promising “best management practices to control stormwater impacts,” but leaves out specifics. For example, it is not even clear if BWRR is proposing a stormwater treatment facility or an underground stormwater vault to address runoff impacts from the Project or simply relying on unspecified, other management practices. Perhaps BWRR has subsequently provided these details to MDE, but Greenbelt and the public have not seen them.

As MDE is aware, just last month, in September 2023, U.S. EPA revised the Clean Water Act (CWA) requirements for water quality certifications.¹⁴ Those new requirements will become effective before MDE must issue its determination on BWRR’s application in February 2024. EPA

¹¹ See <https://www.permits.performance.gov/permitting-project/dot-projects/baltimore-washington-superconducting-maglev-project>.

¹² MDE, Not. of Public Info. Hrg App. for WQC 23-WQC-0007 (Aug. 25, 2023).

¹³ See Lorraine Mirabella, *High-speed rail operator reaches settlement with developer over disputed Westport land*, Baltimore Sun (Nov. 6, 2023), available at <https://www.baltimoresun.com/business/bs-bz-westport-land-dispute-settled-allowing-development-and-high-speed-rail-20231106-b5cebmgd55amnezqhwe2jj2wbq-story.html>.

¹⁴ EPA, Clean Water Act Section 401 Water Quality Certification Improvement Rule, revising EPA’s regulations for State, Tribal, and EPA Clean Water Act § 401 certifications, 88 Fed. Reg. 66558 (Sept. 27, 2023) (2023 Final Rule).

clarified that for certification decisions on applications like BWRR's, which will be made after the 2023 Final Rule's effective date of November 27, 2023, the 2023 Final Rule applies to MDE's certification decision.¹⁵

BWRR submitted its application when the prior CWA § 401 certification rule was in place and thus may not have submitted all the information it had on impacts to water quality requirements. MDE must now ask BWRR to supply whatever additional information is necessary to determine water quality impacts. EPA clarified in its 2023 Final Rule that the Project proponent is required to provide "maps, studies, or a reference to a website or literature that contain information that informed the development of the application or draft license or permit" and may include "sediment and erosion control plans, restoration plans, alternatives analysis, mitigation plans, modeling, and/or other materials that have already been developed for the Federal license or permit application."¹⁶ Whatever is available to BWRR may be requested by MDE before its certification decision.

EPA has broadly defined what a certifying authority may consider when making a CWA § 401 decision. For example, in its 2023 Final Rule, EPA cited with approval a letter where the EPA asserted that the:

protection of water quality includes protection of multiple elements which together make up aquatic systems including the aquatic life, wildlife, wetlands and other aquatic habitat, vegetation, and hydrology required to maintain the aquatic system. [Citation omitted.] The letter further noted that water quality issues can include toxic pollutants, pollutant bioaccumulation, aquatic species composition and diversity, habitat loss, stormwater impacts, nonpoint source impacts, and hydrological changes.¹⁷

BWRR does not appear to have completed the sediment and erosion control plans, restoration plans, mitigation plans, and other necessary information and states that many of these plans will be developed later or are in draft, which means that its application is incomplete. Perhaps for this reason, the U.S. Army Corps' regional leadership described BWRR's WQC application as "very conceptual," and noted that if MDE does not have "the info[rmation] needed for a complete evaluation, you could deny the [CWA §] 401 before the one year deadline, correct?"¹⁸

¹⁵ See 88 Fed. Reg. 66558, 66655 (Sept. 27, 2023) ("if a certifying authority received a request for certification, prior to the effective date of this final rule [Nov. 27, 2023], and the certifying authority has not acted on the request for certification as of the effective date, any decision issued by the certifying authority after the effective date of this final rule must comply with the requirements in the final rule (e.g. scope of certification).").

¹⁶ EPA, 2023 Final Rule, 88 Fed. Reg. at 66575 & n.43.

¹⁷ *Id.* at 66602.

¹⁸ Email from Joseph P. DaVia, Chief, Maryland North Section, U.S. Army Corps of Engineers to Heather Nelson, MDE (Feb. 17, 2023), on file with author and released as part of a Public

MDE must fully consider all water quality-related impacts from the Project, including examining the cumulative impacts of building and tunneling a linear project in a sensitive watershed, and can no longer evaluate only impacts from point source discharges on water quality standards. Because BWRR's WQC application provides an incomplete picture of the Project's impacts on water quality and is based on a route that may not even be selected, MDE must deny certification.

IV. The SCMAGLEV Project Cannot Be Certified Because It Will Have Adverse Impacts to Water Quality and Those Impacts Are Insufficiently Described.

Maryland Coalition for Responsible Transit (MCRT) has provided extensive comments about how the WQC application fails to fully describe the water quality impacts of the SCMAGLEV. Greenbelt supports those comments and provides these additional comments to show how these deficiencies specifically impact the Greenbelt area.

A. The SCMAGLEV Will Change the Character of Greenbelt and the Greenspaces Around It.

As provided in BWRR's Impact Summary Tables, the proposed J-03 alignment for the SCMAGLEV will have permanent impacts on the areas around its route, primarily in and around Greenbelt and areas north, where the SCMAGLEV will run over a viaduct rather than through a tunnel.

Alternative J-03 would permanently impact a total of 22.6 acres of wetlands and 8,781 linear feet of nontidal waterways in the Gunpowder-Patapsco, Middle Potomac-Anacostia-Occoquan, and Patuxent watersheds. It will also permanently impact 427 forested acres.¹⁹ These impacts are in addition to what BWRR claims will be temporary impacts on 27.77 acres of nontidal wetlands, 21.08 acres of nontidal wetlands buffer, and 17,691 linear feet of nontidal waterways.²⁰

Because BWRR has not proposed a mitigation or replanting plan, MDE has no way of knowing whether those impacts are truly temporary. Likewise, BWRR stated in its JPA documents that it will not prepare planting plans (or erosion control plans) until "the design advances towards the FEIS phase for the preferred alternative,"²¹ and, as noted, the FEIS is on hold indefinitely.

Moreover, these nontidal wetlands include Nontidal Wetlands of Special State Concern (NTWSSC) and their expanded buffers. BWRR proposes to permanently impact 1.96 acres of NTWSSC and 2.97 acres of NTWSSC expanded buffer, and to cause temporary impacts to 0.49

Information Act request in a file labeled "07Feb2023_BWRR_SCMaglev WQC Request," PDF page 13.

¹⁹ BWRR, WQC Application, Application Cover Page at PDF 6, *see also* MDE, Not. of Public Info. Hrg App. for WQC 23-WQC-0007 (Aug. 25, 2023).

²⁰ *Id.*

²¹ JPA, Ex. R at 18, Cmt. #43.

acres of NTWSSC and 3.56 acres of NTWSSC expanded buffer.²² Approximately 52.6 acres of impacts to the 100-year nontidal floodplain are proposed.

Given the route BWRR evaluates in its WQC application, there are truly no good options to avoid impacts to sensitive areas that are important to Greenbelt and the region as a whole. For example, in its comments on BWRR's application, the U.S. Army Corps proposed that BWRR reroute the SCMAGLEV under the Little Patuxent River to reduce nearly 50 acres of watershed impacts.²³ BWRR explained that the only way to avoid those impacts would be to "mov[e] the northern portal of this alignment into the Patuxent Wildlife Refuge which would create other undesirable impacts."²⁴

Likewise, the route evaluated in the WQC application involves building a trainset maintenance facility (TMF) in the Beltsville Agricultural Research Center (BARC), a heavily forested area. Increasing impervious surface in this area would significantly alter and degrade the Beaverdam Creek watershed and its headwaters and replace natural areas and open space with hundreds of acres of new impervious surfaces. In its WQC application, as discussed further below, BWRR admits that it cannot fully mitigate these impacts because of the limited reforestation opportunities in this watershed.

B. Impacts to Species and Species' Habitat Are Insufficiently Described and Will Violate Water Quality Requirements.

Impacts to wildlife and wildlife habitat are a component of the water quality issues that must be considered as part of MDE's decision on BWRR's WQC application.²⁵ The SCMAGLEV is "likely to remove features such as, but not limited to, vernal pools, oxbows, forested canopy coverage, and large woody debris. ... [that] provide unique functions for aquatic species."²⁶ BWRR claims to have provided a "detailed" summary of anticipated lost functions, but that summary is a mere two pages, where it catalogues in a bullet-list the types of impacts, including, generally a description that the SCMAGLEV, "may result in direct impacts to rare natural communities and species populations that rely on forested uplands and wetlands, vernal pools, or

²² *Id.*

²³ JPA, Ex. R, Cmt. & Resp. #27 at 12; Letter re 23-WQC-2007 from Danielle Spendiff, Chief of the Regulatory and Customer Service Division, MDE to Neb Sertsu, BWRR at 5 (Sept. 8, 2023) (MDE Sept. 8, 2023 Cmts.).

²⁴ *Id.*

²⁵ EPA, 2023 Final Rule, 88 Fed. Reg. at 66602.

²⁶ JPA, Ex. R, Cmt. & Resp. #29 at 12.

riparian areas during any part of their lifecycles.”²⁷ When one examines the Wetland Function-Value Evaluation Forms BWRR submitted to MDE, BWRR provides no detail about the wetland impact and instead lists the area of wetland impact as “TBD.”²⁸ In addition the Wetland Function-Value Evaluation Forms are only provided for a subset of the wetlands to be affected by the SCMAGLEV.²⁹ As the Corps noted in its comments on BWRR’s JPA and MDE noted in comments on BWRR’s WQC application, compensatory mitigation is required to address the loss of unique habitat features in impacted streams and riparian wetland areas.³⁰ BWRR cannot provide compensatory mitigation for impacts it does not fully acknowledge or describe.

As Greenbelt explained in its comments on the DEIS, the SCMAGLEV would also impact the nearby terrestrial wildlife. According to the DEIS, roosting sites for the federally endangered Northern long-eared bat “may be directly or indirectly affected through immediate loss of forest or the presence of adjacent temporary construction disruption or new structures,”³¹ yet BWRR’s WQC application does not discuss specific impacts to the bat or other impacted wildlife species, including rare, threatened, and endangered species, forest interior dwelling species, migratory birds, and wetland species.³² Additionally, BWRR’s WQC application does not adequately evaluate the impacts the Project would have on these species’ habitat, including, importantly, the water resources and habitat on which many of these species depend.

BWRR’s summary does not allow MDE, Greenbelt, or the affected public to determine impacts to species’ habitat for purposes of analyzing impacts to water quality-related requirements.

C. BWRR’s Forest Mitigation Plans Are Deficient and Reveal Adverse Water Quality Impacts.

BWRR’s WQC application shows that the SCMAGLEV does not comply with Maryland laws and regulations that apply to forest mitigation. Greenbelt is concerned about these failures

²⁷ See JPA, Ex. G at § 2.3. See also JPA, Ex. B at PDF 1366 (Wetland Function Evaluation Form for Wetland WP115, part of the forested upland of Beaverdam Creek, with checkbox indicating “[e]vidence of mammals, amphibians, and bird use.”).

²⁸ JPA, Ex. B at PDF 1366.

²⁹ Compare JPA Ex. B at PDF 6 (sheet 4 of 27 providing wetlands in Beaverdam Creek and Beck Branch area) with Wetland Function-Value Evaluation Forms, JPA, Ex. B at PDF 1365-1367 (providing Forms for wetlands WP115, and WP128 and 128B but not the other wetlands listed in the Wetland Location Maps provided in JPA, Ex. B for the Beaverdam Creek Area).

³⁰ JPA, Ex. R at 12; MDE Sept. 8, 2023 Cmts. at 4.

³¹ DEIS at 4.12-8; see also DEIS App. D.7 at D.7-133.

³² MDE commented on BWRR’s failure to provide “current characterizations or planned studies of State or federally listed potential endangered species and habitat, threatened species, or rare, threatened or endangered species in Maryland.” MDE Sept. 8, 2023 Cmts. at 5.

given that the forests SCMAGLEV proposes to impact are integral to the greenspace that gives Greenbelt its character, including forested areas near Beaverdam Creek and in the BARC. Natural, undeveloped areas within Greenbelt are protected for natural resource conservation purposes. They are known as Greenbelt’s “preserves” and are conserved in their existing, natural state for the use and enjoyment of present and future generations. The preserves serve a vital function by providing a link between residents of the city and nature. They are part of Greenbelt’s cultural identity, its ambiance, and sense of place.

The proposed route in BWRR’s WQC application includes building a TMF and accompanying guideway tunnel transition area in the BARC. If this construction proceeds as proposed, the Beaverdam Creek watershed area will permanently lose 216 forested acres, yet BWRR proposes to provide mitigation for less than a quarter of those acres—55.3 acres overall.³³ BWRR chose to propose a route through the BARC but acknowledges that it is difficult to reduce impacts to intact, biodiverse forested areas: “Most of the areas within and adjacent to the TMF are forested, which makes avoiding impacts difficult.”³⁴

BWRR has also failed to find mitigation parcels within the Beaverdam Creek watershed:

Because of the limited amount of reforestation opportunities in this watershed, BWRR also identified out-of-kind conservation sites. The most recent landowner coordination indicates that approximately 20 acres are achievable for off-site conservation within the Beaverdam Creek watershed. With the total 1:1 mitigation target of approximately 216 acres and the total realistic estimates for in- and out-of-kind mitigation potential, the 1:1 target is not likely to be achievable.³⁵

The SCMAGLEV, if constructed as proposed, will destroy highly biodiverse contiguous forest, National Wildlife Refuge, and local parks, and will replace them with fragmented forested areas lacking permanent protection.

As MCRT explains in its comments, forests provide important ecosystem services that will be lost by removing forest cover in the Beaverdam Watershed. Among other benefits, forests filter out nitrogen, phosphorus, and sediment pollution from runoff to keep it from entering surface and groundwaters. They also help to maintain stream temperature, reduce erosion, and provide wildlife habitat.³⁶

³³ BWRR, WQC Application, Ex. G at 1-2, 20, 24. Important forest cover will be lost in the Patuxent River Watershed also, but these comments focus on impacts to the Beaverdam Creek watershed given its closer proximity to Greenbelt.

³⁴ BWRR, WQC Application, Ex. G at 20.

³⁵ *Id.* at 24.

³⁶ *Forest Loss*, The Chesapeake Bay Foundation, <https://www.cbf.org/issues/forest-loss/index.html> (last visited Nov. 16, 2023).

In addition to failing to identify mitigation acres to cover even a quarter of the forested acres that will be permanently lost, BWRR also does not provide any concrete plans for protecting the forest mitigation lands it has identified. Rather, BWRR proposes to evaluate options once the Project is built, providing no assurance that the forested areas will be protected: “BWRR will evaluate options for protecting the mitigation sites in perpetuity and provide documentation of protection mechanisms and financial assurances no more than 60 days after construction completion.”³⁷

Based on its failure to fully identify and then to properly mitigate impacts to forest cover loss, MDE must deny BWRR’s WQC request because the SCMAGLEV will cause impermissible impacts to water quality in Maryland.

D. BWRR Has Failed to Analyze Water Quality Impacts from Tunneling.

BWRR has delayed key details about its tunneling and restoration plans until it undertakes further analysis sometime in the future and has not fully explained the discharges that may occur because of tunneling or transition zone construction. Tunneling can cause significant aquifer breaches, blow-outs, and involve the use of chemicals that can make their way into surface and groundwater. Rather than carefully evaluate the possible impacts from tunneling, BWRR admits it still has not completed geological investigations or tunneling plans:

BWRR does not anticipate any tunneling or transition zone construction to cause discharges that would adversely affect the water quality above or below ground. BWRR will develop comprehensive tunneling and contingency/restoration plans as the design progresses and additional geological investigations are conducted, in addition to the typical procedures for addressing impacts described in the Memorandum in Appendix J.³⁸

As Greenbelt noted in its comments on the DEIS, tunneling could have significant adverse impacts on structures within Greenbelt along with adverse water quality impacts.³⁹ Despite these warnings, BWRR continues to rely on future planning efforts to assure MDE that there will be no violations of federal or state water quality requirements. In its recent comments to BWRR, MDE highlighted similar deficiencies and requested modeling, construction specifications along with any contractual requirements to protect groundwater resources, as well as protocols for addressing inadvertent returns from tunneling to surface waters.⁴⁰ MDE should not allow BWRR to rely on these future planning efforts instead of detailed geological modeling, tunneling, and restoration plans.

³⁷ BWRR, WQC Application, Ex. G at 11.

³⁸ BWRR, WQC Application, Key Elements Outline at 11 (Feb. 7, 2023), document entitled “MAGLEV_WQC_MEMORANDUM_Finalv05.”

³⁹ See DEIS Comments at 114-138.

⁴⁰ MDE Sept. 8, 2023 Cmts. at 3.

Under route alternative J-03, Greenbelt lies in an SCMAGLEV transition zone where the SCMAGLEV will transition from a tunnel to running over a viaduct,⁴¹ and Greenbelt is very concerned about tunneling impacts in those transition zones. Rather than provide any specifics about this area, BWRR discounts the impacts of blow-outs because most of the tunneling will be underground: “The generally deep depth of the tunnel alignment itself negates the likelihood of ‘blow-outs’ occurring on account of the weight of overburden, overburden composition and hydraulic head upon the TBMs.”⁴² Yet, this statement does not address the concerns of communities in transition zones where the tunneling must come to the surface.

For those areas, BWRR appears to suggest that future “identification of sensitive areas along the alignment and careful consideration of the local ground conditions in development of tunneling parameters ... as well as extensive surface monitoring,” to be developed in not-yet-completed Geotechnical Baseline Reports, will ensure that there are no adverse impacts to water quality requirements.⁴³ None of this is sufficient to allow MDE to evaluate impacts to water quality requirements now. BWRR has failed to show that there will *not* be adverse impacts to water quality requirements because it defers key elements of tunneling design and mitigation until future analysis.

E. Potentially Toxic Dredge Spoils Could Cause Violations of Water Quality Requirements.

Although BWRR’s tunneling plans are still incomplete, BWRR estimates that it will generate over 26 million cubic yards of spoils from tunneling excavation that it anticipates “to be clean and undisturbed, the material can potentially be useful as daily cover for local landfills (*e.g.*, Millersville Landfill, Baltimore City Dump, PG County Waste Management) and/or fill for local or future projects (*e.g.* Sparrow’s Point redevelopment, BWI Airport).”⁴⁴

The U.S. Army Corps questioned BWRR’s assumption that the spoils will be “clean and undisturbed,” and cautions BWRR against “the potential use of spoils on Chesapeake Bay shoreline and island enhancement projects.”⁴⁵ In response, BWRR claims that it will determine the potential presence of contaminants based on “future geotechnical analysis.”⁴⁶ This provides the public and MDE no basis to understand the potential water quality impacts from the millions

⁴¹ *See, e.g.*, Vicinity Map, JPA Cover Letter (Nov. 25, 2020), at PDF 13.

⁴² BWRR, WQC Application, Ex. J at 2.

⁴³ *Id.* at 3.

⁴⁴ BWRR WQC Application, Ex. I (Construction Planning Memorandum) at 50.

⁴⁵ JPA, Ex. R, at 18, Cmt. #46.

⁴⁶ *Id.*

of cubic yards of spoils and whether those spoils will be stored in a manner that does not pollute the waters and lands near Greenbelt.

In addition, BWRR's Construction Planning Memorandum raises further questions about BWRR's spoils management plan, as MCRT explains in its comments. In the Memorandum, BWRR describes "stockpiling the spoils"⁴⁷ at launch sites and states that, at some future time, transportation of spoils to a final destination "can be via dump truck or heavy rail (CSX)."⁴⁸ BWRR does not provide further details about the plan for handling the spoils in a manner that will not allow them to contaminate surface waters or even what waters will be affected. There is no information regarding how the launch sites will be managed to avoid runoff from the spoils or to keep the spoils from otherwise making their way into surface water or groundwater, including during intense rain events. BWRR does not provide any assurances regarding how transportation of the spoils will be managed to prevent spilling of the spoils during transportation.

As MCRT, the City of Bladensburg, and others have pointed out, SCMAGLEV tunneling will include areas near the former Colmar Manor landfill, which contains toxic waste including asphalt shingles, asbestos, tires, and household and commercial trash. The SCMAGLEV tunnel will likely be boring through this contaminated soil. Boring in this area has the potential to unearth toxic spoils and cause further contamination of the Anacostia River watershed.

BWRR's WQC application should be denied for failure to provide assurances that it will not cause adverse impacts to water quality from tunneling spoils.

F. BWRR's Description of Stormwater Impacts Is Insufficient to Evaluate Impacts to Water Quality Requirements.

BWRR's WQC application should be denied because stormwater impacts are insufficiently described and insufficiently planned for, and this uncertainty, particularly with respect to impacts on Beaverdam Creek, creates a disproportionate and unacceptable impact on the BARC and on Greenbelt residents. As we explained in our comments on the DEIS, the Anacostia River, the watershed in which Greenbelt and the BARC are located, is impaired for nutrients, sediment, fecal coliform bacteria, impacts to biological communities, polychlorinated biphenyls (PCBs), and trash and debris, making the need for stormwater management especially pronounced.⁴⁹

Despite this need, BWRR provides virtually no detail on how stormwater will be managed. Instead, in the misleadingly named "Summary of Stormwater Treatments" (Exhibit H), BWRR provides only the vaguest of details, noting that "Potential Underground Stormwater Vault BMPs [best management practices] will provide stormwater treatment," and that "[m]anagement of

⁴⁷WQC Application, Ex. I at 15.

⁴⁸ *Id.* at 20.

⁴⁹ DEIS Comments at 59.

stormwater runoff in the viaduct section will be refined during final design.”⁵⁰ In its DEIS Comments, Greenbelt noted that the DEIS failed to provide evidence to support its conclusion that stormwater management environmental site design practices and BMPs would reduce these potential impacts from runoff, and ensure there is no discharge into adjacent waterways,⁵¹ yet BWRR again provides unsupported conclusions in its WQC application.

Likewise, BWRR spends only one sentence on stormwater management in the Construction Planning Memorandum.⁵² Although BWRR also offers a “Summary of Stormwater Treatments,”⁵³ this two-page document simply alludes to “standard erosion control practices” to manage water discharges. Once again, BWRR asks the public and MDE to trust them to figure out key details later. MDE cannot approve BWRR’s WQC request because it does not fully consider the impacts of construction stormwater or provide a plan to manage construction stormwater.

This vagueness is compounded by the vagueness in the site layout maps showing the proposed SCMAGLEV construction and proposed stormwater best management practices. The language in Exhibit H to BWR’s WQC application suggests that best management practices could take place underground, but in the site layout maps that it refers to (Exhibit C, TMF-02 and TMF-03), the words “underground” and “vault” do not appear.⁵⁴ Greenbelt’s DEIS comments described at length the issues with BWRR’s stormwater impact analysis, and the WQC application does not resolve these issues.⁵⁵ Furthermore, in its comments on the JPA, the U.S. Army Corps stated that BWRR would need to provide additional detail and an accurate accounting of impacts and any potential discharges to waterways and noted the lack of specification of TMF impacts.⁵⁶ Likewise, in its recent comments to BWRR, MDE highlighted the need for BWRR to submit an accurate description of “[p]otential operational discharges” and a demonstration of compliance with state stormwater, sediment and erosion control requirements.⁵⁷ Greenbelt and MDE cannot evaluate whether BMPs will be adequate to protect water quality if they doesn’t know what they are.

⁵⁰ WQC Application, Ex. H at 2.

⁵¹ DEIS Comments at 67.

⁵² WQC Application, Ex. I at 46.

⁵³ WQC Application, Ex. H.

⁵⁴ *See* WQC Application, Ex. C at TMF-02 – TMF-03.

⁵⁵ DEIS Comments at 59-68.

⁵⁶ JPA, Ex. R at 3-6.

⁵⁷ MDE Sept. 8, 2023 Cmts. at 3-4.

G. BWRR's Cumulative Effects Analysis is Deficient.

In its WQC application, BWRR does not sufficiently describe or assess the cumulative impacts of irreversible loss of some of the highest quality natural lands in Maryland due to the SCMAGLEV, including the BARC. The BARC lies within the largest contiguous forest and conservation lands in the Baltimore-Washington region. Building in these areas, whether intended to be permanent or “temporary,” would cause irreversible damage to the ecosystem and have negative impacts throughout the affected watersheds.

In its WQC application, BWRR requests that MDE certify that its application to discharge into Maryland's wetlands and waterways complies with CWA § 404 and related state water quality requirements. A key element of any wetlands/waterways application is a description of the “probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” 33 C.F.R. § 320.4(a). Similarly, as part of the CWA § 401 certification, MDE may address adverse water quality impacts directly caused by the SCMAGLEV as well as: “adverse impacts contributed to by a federally licensed or permitted activity. For example, a certifying authority may deny or condition an activity that will contribute to ongoing noncompliance with water quality requirements.”⁵⁸ But BWRR does not fully evaluate the cumulative effects of the SCMAGLEV Project or present information that would allow MDE to do so.

For example, as MDE is considering the water quality impacts from the proposed SCMAGLEV and the remaining assimilative capacity of the Beaverdam Creek, it must consider the existing and cumulative impacts from BARC's wastewater treatment facility, which discharges into Beaverdam Creek and continues to violate its National Pollutant Discharge Elimination System permit.⁵⁹ In addition, BWRR must consider the cumulative impact of the Department of Treasury's plan to construct a new Currency Production Facility in the BARC. Greenbelt provided extensive comments to the Bureau of Engraving and Printing and the U.S. Army Corps opposing this Facility because of its extensive environmental impacts.⁶⁰ Among other impacts, the additional impervious surface from the Facility and impacts on wildlife habitat occur in the same watershed as the SCMAGLEV. Instead of appropriately addressing these cumulative impacts, BWRR

⁵⁸ EPA, 2023 Final Rule, 88 Fed. Reg. at 66600.

⁵⁹ See EPA, Enforcement and Compliance Data, https://echo.epa.gov/detailed-facility-report?fid=110051875299&ej_type=sup&ej_compare=US.

⁶⁰ Greenbelt, Comments on the DEIS for the Proposed Currency Production Facility at the BARC (Dec. 21, 2020), *available at* https://www.nab.usace.army.mil/Portals/63/docs/BEP/DEIS/BEP_EIS_DEIS_Comments_Redacted.pdf at PDF page 69.

mentions the Facility in its Social and Economic Justification but does not evaluate its impacts cumulatively with the SCMAGLEV.⁶¹

MDE must also consider the impacts of the SCMAGLEV together with possible impacts on flooding from increasing impervious surface combined with the anticipated increased heavy rainfalls because of regional climactic shifts. Instead, in its WQC application and related JPA, BWRR analyzes potential impacts based on historic rainfall patterns which are not predictive of future Maryland rainfall patterns or future flood (and water contamination) risk. For example, BWRR states that, through stormwater management environmental site design, it aims to mimic water quality discharges to a “good condition forested woods (up to a 1” rainfall event) and accommodate a 1-year, 24-year storm event for channel protection.”⁶² BWRR’s WQC application fails to analyze the impacts of the SCMAGLEV together with Maryland rainfall patterns of the past several years, which have exacerbated impacts to water quality from stormwater runoff.

In short, BWRR has not analyzed cumulative impacts on major watersheds from all pollution sources to waters that would be affected by the Project and, because of these failures, the WQC application fails to fully describe impacts to water quality.

V. BWRR’s WQC Application Fails to Comply with Maryland’s Antidegradation Implementation Procedures and Provides Insufficient Detail about Whether the Additional Load for Beaverdam Creek Will Overwhelm the Assimilative Capacity of the Creek.

BWRR’s WQC application does not satisfy Maryland’s antidegradation procedures or demonstrate that impacts from the SCMAGLEV’s construction and operation are consistent with protecting and maintaining existing water uses and water quality.

Maryland’s Tier II antidegradation review is designed to protect Maryland’s Tier II high-quality waters. Tier II waters are those with quality exceeding that necessary to “support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.”⁶³ Maryland’s antidegradation review process requires a four-step evaluation, including (1) identifying impacts, (2) performing an alternatives analysis, (3) minimizing impacts, and then (4) preparing a social and economic justification for unavoidable impacts.⁶⁴ BWRR fails to comply with this process and does not properly address impacts to Tier II waters.

⁶¹ WQC Application, Antidegradation Analysis, Social and Economic Justification Report, Rev. 2 at 4.

⁶² WQC Application, Ex. G at 10.

⁶³ Md. Code. § 131.12(a)(2).

⁶⁴ Maryland COMAR § 26.08.02.04-2.

In its WQC application, BWRR admits that there will be unavoidable impacts to the Beaverdam Creek watershed and the Patuxent River.⁶⁵ The Patuxent River and the Beaverdam Creek, which is divided into two parts (1 and 2), are both designated as Tier II waters in Maryland.⁶⁶ MDE is therefore required to “maintain” and “protect” “[e]xisting in-stream water uses and the level of water quality necessary to protect existing uses,”⁶⁷ from these waters. Beaverdam Creeks 1 and 2, which are important to the Greenbelt area, have the same fish index of biological integrity (IBI) scores, and Beaverdam Creek 2 has a slightly higher benthic macroinvertebrate IBI score.⁶⁸

The SCMAGLEV Project cannot satisfy Maryland’s antidegradation policy and BWRR’s WQC application fails to comply with the four-step process for antidegradation review. For the reasons catalogued in Part IV of these comments—because of all the information gaps in its WQC application—BWRR has not provided a full analysis of impacts from the SCMAGLEV. Based on the impacts that *were* described in BWRR’s WQC application, SCMAGLEV will permanently change the Beaverdam Creek watershed by adding additional impervious surface and removing forest cover. Throughout its antidegradation memo, BWRR states that it cannot mitigate these impacts.

Likewise, BWRR has not made a fulsome effort to minimize impacts because it has not yet prepared its erosion or sediment control plans or, as discussed above, done more to address stormwater impacts other than to commit to using best management practices.

Despite this deficient analysis, BWRR asserts that unavoidable impacts to the Beaverdam Creek 2 watershed will not impair water quality because the Creek has assimilative capacity to absorb additional pollutants and impacts.⁶⁹ However, as MCRT explains in its comments, BWRR

⁶⁵ See generally WQC Application, Ex. G.

⁶⁶ Maryland COMAR § 26.08.02.04-2 (N).

⁶⁷ *Id.* § 26.08.02.04-2 (L)(4).

⁶⁸ As MCRT explains in its comments on BWRR’s WQC application, MDE’s public notice for the WQC application incorrectly identifies the affected watersheds as including only Beaverdam Creek 1. Meanwhile, BWRR’s anti-degradation review describes impacts only to Beaverdam Creek 2. Based on watershed maps, SCMAGLEV affects both parts of the Beaverdam Creek, and MDE must therefore properly evaluate impacts to all of Beaverdam Creek. Per Maryland regulation, public input is an important part of the antidegradation review process, Maryland COMAR § 26.08.02.04-2(E), (M), and by misidentifying the portion of Beaverdam Creek to be affected by the SCMAGLEV, MDE did not put the public on notice about the impacts of the SCMAGLEV and thus violated its own antidegradation review public notice procedures.

⁶⁹ According to MDE’s website, Tier II water quality “is considered diminished if the [assimilative capacity] is reduced by more than 25% from the original Tier II designation baseline.” See MDE, Anti-Degradation Policy, available at

does not actually consider whether the affected Tier II waters (including Beaverdam Creeks 1 & 2 and the Patuxent River) have remaining assimilative capacity. In addition, available sampling data from the Maryland Biological Stream Survey shows that the Beaverdam Creek may already be significantly degraded (with measured IBI scores well below the 3.00 threshold), suggesting that Beaverdam Creek has no additional assimilative capacity to absorb additional pollutants or impacts. Based on this data, BWRR's WQC application should be denied because it fails to address the impacts from the SCMAGLEV further degrading an already impacted Tier II watershed.

Finally, had BWRR fully evaluated impacts from the SCMAGLEV and performed a proper mitigation and minimization evaluation, it may have been able to avoid proposing adverse water quality impacts to Beaverdam Creek and therefore no social and economic justification (SEJ) would have been required. Instead, BWRR is required to provide an SEJ and does not adequately justify social and economic impacts from the Project's effects on Tier II waters.

BWRR's SEJ is significantly flawed. Greenbelt will not repeat the thorough critiques presented by other commenters but notes only that, as Greenbelt explained more fully in its comments on the DEIS,⁷⁰ the proposed economics of the SCMAGLEV are based on a series of unrealistic assumptions revealing that many of the promises of the SCMAGLEV are unlikely to be realized. The ridership estimates for the SCMAGLEV—and thus the long-term financial viability of the SCMAGLEV—are based on unsubstantiated savings in travel time, exceedingly frequent service, and unreasonable predictions of ridership preference. For example, the ridership report prepared for the DEIS:

assumes that about 70.0 percent of business travelers in the defined catchment area and 67.0 percent of non-business travelers, which includes those making personal trips as well as commuters, between Baltimore and Washington, D.C., would choose the SCMAGLEV service if it were available.⁷¹

In addition, the ridership estimates ignore the demand impacts of charging over \$50 for a one-way ticket between Baltimore and Washington, D.C, a dramatic difference in per trip or per day costs compared to typical MARC commuter fares of less than \$10/trip or even less for those with monthly passes who commute most days.⁷² Nevertheless, the DEIS suggests unrealistically that up to two-thirds of all MARC riders between Baltimore and D.C. would start taking the SCMAGLEV rather than MARC.⁷³ Likewise in the SEJ, BWRR suggests that SCMAGLEV would

https://mde.maryland.gov/programs/Water/TMDL/WaterQualityStandards/Pages/Antidegradation_Policy.aspx

⁷⁰ See DEIS Comments at 20-58.

⁷¹ DEIS at 4.6-3 (PDF p. 255).

⁷² DEIS App. D.2 at D-108 Table D.2-35 (describing SCMAGLEV fares between Baltimore and Washington of \$70-79 during peak times and \$59-\$69 for off-peak times).

⁷³ DEIS App. D.4 at D-56-57, D-61, Tables D.4-48 and D.4-49.

“direct pressure away from MARC to make service changes for express routes.”⁷⁴ These kinds of unexplained assumptions underpin the ridership estimates and thus the proposed revenues and overall economic impact of the SCMAGLEV. In short, because the SCMAGLEV is a misguided Project based on unreasonable economic assumptions, BWRR cannot justify further impairing Maryland’s waters to build it. Like the rest of its application, BWRR’s SEJ is fundamentally flawed. BWRR’s WQC application must be denied for failure to comply with Maryland’s antidegradation policy.

CONCLUSION

Greenbelt strongly urges the Maryland Department of the Environment to deny BWRR’s Request for Water Quality Certification for the SCMAGLEV Project because BWRR’s WQC application is woefully deficient and, even so, reveals impermissible adverse impacts to water quality requirements. The Project would harm human health and the environment, destroy parkland, compromise the integrity of the Greenbelt National Historic Landmark, and reduce residents’ quality of life. It is an unnecessary waste of public funds that should be better spent improving existing infrastructure.

⁷⁴ WQC Application, Antidegradation Analysis, Social and Economic Justification Report, Rev. 2 at 18 (Mar. 2022).