

MONTGOMERY COUNTY STORMWATER PARTNERS NETWORK



Conservation
Montgomery



May 31, 2018

Dear Executive Leggett,

We understand that you are planning to line-item veto the Council's FY19 stormwater capital budget. We write today respectfully requesting you to reconsider this veto, and allow the Council's majority decision to stand in the FY19 capital budget.

As leaders of the Stormwater Partners Network, we are proud of the achievements of Montgomery County in stormwater management and watershed restoration. Our regionally-and nationally-recognized stormwater program is largely thanks to your leadership. Your clean water contributions began when you led the effort to establish the Water Quality Protection Charge during your service on the County Council, and have continued since 2006 through your leadership as County Executive.

Vetoing the Council decision on the stormwater capital budget would be a mistake. While we don't understand the full legal ramifications of such a rarely-used budget tool, to the best of our knowledge, it would put an immediate freeze on a great deal of ongoing stormwater work. No side in this debate wants that outcome – we all want the work to continue at speed. While you may feel the Council vote was imperfect (as do we, as we wish they had restored some of the cut funding), continuing an imperfect stormwater program is far better for our waterways and for the county's ability to meet its legal obligations than essentially cancelling that stormwater program.

We have recently seen the impacts of stormwater in Ellicott City, Maryland. While many, many factors contributed to the devastating flooding in Ellicott City, it is an example of the power of stormwater that continues to damage streams and properties – both public and private – throughout Montgomery County. We need to work together to comprehensively address stormwater at all levels of a watershed. A veto at this time would harm the county's ability to move forward with this critical stormwater work and could threaten the county's ability to meet consent decree and existing permit requirements.

Below is our detailed discussion of the strengths of our current stormwater program, and the direction we believe it must take to provide even greater benefits for Montgomery's residents and businesses. For the reasons we provide, we urge you to refrain from vetoing the stormwater program, and instead, to keep the current framework for now, and work with us to build a larger consensus that honors the strengths and improves upon key aspects of this crucial program.

Yours for clean water,

Caitlin Wall, Potomac Conservancy
Diane Cameron, Conservation Montgomery
Eliza Cava, Audubon Naturalist Society
Kit Gage, Friends of Sligo Creek
Sylvia Tognetti, Maryland Sierra Club, Montgomery County Group
Leaders in the 36-organization Montgomery County Stormwater Partners Network

cc: DEP Acting Director Bubar; Council President Riemer; Special Assistant Joy Nurmi

Montgomery County Stormwater Partner Network - Request to Executive Leggett to Maintain, and Collaboratively Chart the Evolution of, Our Stormwater Program

Vetoing the Stormwater Program would be a mistake

As leaders of the Stormwater Partners Network, we are proud of the achievements and leadership of Montgomery County in stormwater management and watershed restoration. These achievements include being the first jurisdiction to institute large-scale biological stream monitoring, including both Department of Environmental Protection (DEP) staff and support for volunteer citizen stream monitors, and being among the first to institute a private landowner rebate program (RainScapes) for adoption of rain gardens, tree plantings, and other small-scale green practices. Montgomery DEP's expert staff have led the Chesapeake Bay region in crafting and implementing whole-watershed protection and restoration plans that pre-dated our stormwater MS4 permit, and provided the foundation that helped to frame our own, and MDE's, MS4 program. Our regionally-and nationally-recognized stormwater program is largely thanks to your leadership. Your clean water contributions began when you led the effort to establish the Water Quality Protection Charge during your service on the County Council, and have continued since 2006 through your leadership as County Executive.

Vetoing the Council decision on the stormwater capital budget would be a mistake. While we don't understand the full legal ramifications of such a rarely-used budget tool, to the best of our knowledge, it would put an immediate freeze on a great deal of ongoing stormwater work. No side in this debate wants that outcome – we all want the work to continue at speed. While you may feel the Council vote was imperfect (as do we, as we wish they had restored some of the cut funding), continuing an imperfect stormwater program is far better for our waterways and for the county's ability to meet its legal obligations than essentially cancelling that stormwater program.

Unknown future requirements

Looking back, MDE required a 20% impervious acre retrofit in the county's 2010 MS4 permit, which was indeed an unprecedented target that you championed and supported, with full support and engagement of the Stormwater Partners Network. For multiple reasons, the county was unable to meet this MS4 requirement and entered into a consent decree with the MDE. While we wished the county had been able to fully meet its 2010 permit requirements on time, the Stormwater Partners stood with DEP in noting that this was still a monumental achievement and a "glass half-full." Together with DEP, we successfully argued that MDE should not impose what legally could have been a very large cash fine on Montgomery County, but to instead issue a more beneficial requirement for Supplemental Environmental Projects. While we understand that the consent decree represents an enforcement action taken against the county, and that some see it as a black mark on the county's legacy, we firmly disagree. Many large urban jurisdictions enter into consent decrees to address water quality issues; for example, Washington, D.C. is building multiple billion-dollar tunnels – and extensive green infrastructure facilities – to address combined sewer overflows through a consent decree.

Despite this enforcement action, we see DEP and the County as poised now to effectively address its remaining 2010 permit and consent decree requirements, and build a solid foundation to address future MS4 permit requirements (which remain unknown). Citizens have been instrumental partners with government in establishing and evolving Montgomery's stormwater program, and continued and stepped-up citizen co-leadership in this program is crucial to its future success.

Montgomery County spent years developing a framework for our stormwater program, led by DEP staff with citizen group and other stakeholder input. This framework consists of collaborative work of contractors, management, and staff, with community engagement, to design, permit, and build stormwater

projects. There have been delays in this work. However, the existing model cannot solely be blamed for these delays, as it was not even implemented until three years into the existing 2010 permit. This existing model, publicly-managed at each major step of the process including project selection and watershed-wide project coordination, is driven by DEP staff's environmental mission and the MS4 water quality and watershed restoration mandate, and is responsive to citizen requests for projects. And, it has built-in transparency and accountability elements that are essential in order to continue and build on its strong public support and civic engagement. We are proud of the DEP's work in building this program in close collaboration with citizens, and in leading the state and Chesapeake Bay region in watershed protection and restoration and stormwater implementation.

DEP staff have both the environmental mission and the expertise to understand and meet county clean water goals, to prioritize green infrastructure projects, to engage communities, and to collaborate with the Stormwater Partners, other citizen groups, and other county agencies. We do not wish any of these responsibilities to be managed by a private entity. And, we have cautioned Council that the requirements in a future permit are likely to be more than the assumed 5% impervious acre requirement. Therefore, the possibility that a sole-source contract planned now for 500 acres could double to 1,000 acres, still without addressing our concerns or providing opportunities for adaptive management, troubles us further. We *know* that we have enough projects in the pipeline to build over 624.5 impervious acres now - the Council decision to move forward on these projects seems prudent to us until such time as we better understand the next permit.

Public accountability

We have publicly testified over the past few weeks and months to our concerns with the proposal for a large design-build-maintain (DBM) contract mechanism. We appreciate DEP Acting Director Bubar's efforts at answering our questions and responding to our concerns. Yet, we remain unconvinced that the DBM model is the *only* way for Montgomery County's stormwater program to move forward. And, many of our questions regarding this entire process and the DBM model remain. Particular among these concerns are the commitment to public accountability and the need for green infrastructure.

We are confident that by working together to recognize and keep the aspects of the current approach that are working well (and we see many strengths here, starting with the dedication and expertise of DEP staff), we can jointly craft a vision and a blueprint for moving this program forward – in a way that continues Montgomery's clean water leadership.

A core strength of Montgomery's longtime clean water leadership is the role of citizens in collaboration with our local government. Citizens playing many different, collaborative roles with County government, have been instrumental in providing Montgomery's clean water leadership. Unfortunately, our crucial role has been forgotten, sidelined in the current debates.

Citizen groups, including watershed, environmental, and civic organizations, have been the backbone of Montgomery's environmental programs including our clean water programs, from before the inception of the DEP and the MS4 permit. Montgomery County citizens, serving as clean water researchers, monitors, advocates, and community organizers, have been essential partners who have initiated and helped to establish local clean water programs in several agencies including DEP. We have played crucial roles in helping to shape and fund these programs and to communicate with the public about their importance.

In order to continue evolving to meet current and future needs, our stormwater program and its hefty public investment must remain under public control, and must maintain and grow the role of citizens and citizen groups as co-leaders of clean water efforts. The proposed DBM approach raises too many questions about the degree of transparency, public control, and citizen collaboration that it would allow or

conversely, would prevent. One major reason why we don't support the proposed DBM / sole-source approach, is that by its very structure and the fact that it would hand the bulk of program funds to a single private contractor, it would foreclose citizen collaboration and co-leadership with DEP and other local agencies, hallmarks of Montgomery's clean water success over the past three decades.

Green infrastructure

In our meeting with you on February 22nd, you mentioned that the results of your decision would likely be to do the “green” projects later on. We have spoken out about our concern for taking this approach. Green infrastructure, defined simply as practices that use plants and soil to capture, reduce and/or treat runoff, often via infiltration, is the best way to achieve multiple benefits. These benefits include water quality, neighborhood green space, wildlife habitat, air quality, recreation, flood mitigation, property values, climate resiliency, and more. A recent study by the Environmental Finance Center at the University of Maryland highlights the “triple bottom line” (environmental, social, and economic) of quantifiable values provided by various kinds of green infrastructure. For these reasons, the EPA strongly supports implementation of green infrastructure, and the state is seeking ways to incentivize it as well.

The public debate in Montgomery County about green infrastructure often conflates those expensive but necessary engineered projects (variously called “Environmental Site Design,” or ESD, or “Low Impact Development” or LID) like Green Streets, with all forms of green infrastructure. There are many other types, including “softer,” more innovative (and often cheaper) green infrastructure approaches, like planting trees and building infiltrating grass swales. We are currently advocating the state to incentivize these tools in the next MS4 permit. We are concerned that a DBM approach would lead to dropping both ends of the spectrum of green infrastructure, the former because it is perceived as too expensive, and the latter because it is less well-known and requires widespread citizen, landowner, and landscaper participation, when in reality we need more of both kinds to achieve a broad spectrum of environmental and human health goals.

Preserving existing investment

We also raised concern regarding the 26 cancelled and 44 suspended projects (we understand 2 of these 44 will be funded for Parks-specific stream restoration work), arguing that these projects should be preserved because of the taxpayer investment and because they were chosen to support critical environmental and community priorities. We understand that many of the 44 projects are more than 60% complete for design, and that some are ready for construction at this moment. In addition, many of these projects represent low-cost stormwater projects, such as stream restoration or pond retrofits. These projects could be finalized and constructed right now, allowing the County to move ahead in meeting its next MS4 permit.

DEP staff used a thorough process for vetting and choosing these projects, analyzing a variety of criteria to ensure stormwater projects were located throughout the County to address environmental challenges for as many communities as possible. DEP staff included other environmental goals in this analysis - not just meeting the minimum MS4 permit requirements. Of the 44 suspended projects, many, such as the Grosvenor Tributary Stream Restoration, are at or close to the final design phase, are supported by residents, and are cost-effective and important projects from an environmental perspective. Others, such as all four suspended Green Streets projects, represent opportunities for true community engagement and demonstration of green infrastructure in the public right-of-way in neighborhoods without other stormwater management opportunities. These projects offer many options for reasonable continuation and some could be moving towards construction at this moment.

Unknown cost savings

In a recent T&E Council packet, it states “[t]he Recommended CIP assumes savings in per-acre retrofit costs totaling about \$5 to \$6 million in the six-year period. However, actual savings will not be known until the new contract is awarded.” The proposed DBM is based on an assumption of unknown cost savings. We know the county has already cancelled projects worth \$2.6M and the suspended projects are worth \$5.3M. We understand these projected savings are an estimate and are subject to future decisions, and we hope this estimate is conservative as the numbers currently do not add up.

Experience with DBM partnerships suggest they may be effective for some aspects of implementation. However, it is critical that local governments have the capacity to manage the process through strategic planning to guide project selection, build in transparency, accountability, and citizen and interagency collaboration measures, and ensure that the right projects are selected for the right reasons. For these reasons, we have advocated recently for the inclusion of 7 principles to be included in any stormwater program changes; these include 1) attaining watershed-specific restoration and protection goals; 2) ensuring public involvement in project planning and review; 3) ensuring the county’s commitment to 60 percent green infrastructure is fulfilled; 4) prioritizing existing investments (i.e. sunk costs in 44 “delayed” projects); 5) enabling the next executive administration to be adaptable and flexible, especially to meet the needs of a higher permit requirement; 6) promoting public transparency; and 7) promoting greater coordination between the departments that conduct stormwater work.

We invite you to work with us and other stakeholders this summer to translate our seven principles listed above into specific measurable objectives for the stormwater program, including all contracting components. We further invite you to work with us to jointly conduct an open and public review of the county’s stormwater program’s progress, achievements, and strengths, along with areas for improvement and evolution to a more-effective, more-efficient, and more-beneficial program. We are open to exploring changes to the contracting process but, due consideration of such potential drastic changes requires extensive public transparency, discussion, and consensus-building around how the program’s evolution should be directed, in order to ensure that any proposed modifications are the right ones for Montgomery County.

We remain partners in the county’s clean water future and once again respectfully request that you withhold a line-item veto of the Council’s decision.

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